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AND
Thirty-Fifth Under the New Constitution
CHAPTERS 171-386



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CHAPTER 171

AN ACT providing a credit against corporation business tax liability for investment in certain manufacturing equipment and for certain increased employment, 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-5.16 Short title.

1. This act shall be known and may be cited as the "Manufacturing Equipment and Employment Investment Tax Credit Act."

C.54:10A-5.17 Definitions.

2. For the purposes of this act:

"Control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; "control," with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. §267, other than paragraph (3) of subsection (c) of that section.

"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.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Full-time employee" means an employee working for the taxpayer for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business, on a permanent basis, which does not include employment that is temporary or seasonal.

“Investment credit base” means the cost of qualified equipment. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion. If equipment is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement equipment shall not include any insurance proceeds received in compensation for the loss. In the case of self-constructed equipment, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law. The cost of equipment acquired by written lease is the minimum amount required by the agreement, agreements, contract or contracts to be paid over the term of the lease, provided however, that the minimum amount shall not include any amount required to be paid, as determined by the director, after the expiration of the useful life of the equipment.

“Number of new employees” means the increase in the average number of full-time employees and full-time employee equivalents residing and domiciled in this State employed at work locations in this State from the employment base year to the employment measurement year. The employment base year is the tax year immediately preceding the tax year for which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was not subject to tax and did not have a tax year immediately precede the tax year for which a credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed the employment base year is the tax year in which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The measurement year is the tax year immediately following the tax year in which the credit pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), was allowed. The hours of part-time employees shall be aggregated to determine the number of full-time employee equivalents.

“Part-time employee” means an employee working for the taxpayer for at least 20 hours per week for at least six months during the tax year.

“Purchase” means any acquisition of property, including an acquisition pursuant to a lease, but only if:

- a. 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. §267 or §707;

- b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The

director may waive this requirement if the property was acquired from a related person for its then fair market value; and

c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) 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

(2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1014.

“Qualified equipment” means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to subsection a. of section 25 of P.L.1980, c.105 (C.54:32B-8.13), having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use.

“Related person” means:

a. a corporation, partnership, association or trust controlled by the taxpayer;

b. an individual, corporation, partnership, association or trust that is in control of the taxpayer;

c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

d. a member of the same controlled group as the taxpayer.

“Tax year” means the fiscal or calendar accounting year of a taxpayer.

C.54:10A-5.18 Taxpayer credit.

3. 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 2% of the investment credit base of qualified equipment placed in service in the tax year, up to a maximum allowed credit for the tax year of \$1,000,000.

b. The tax imposed for the tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to

this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section and section 4 of P.L.1993, c.171 (C.54:10A-5.19), 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. The amount of tax year credit otherwise allowable under subsection a. of 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 seven tax years following a credit's tax year. Provided however, that a taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation; provided further, however, that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. "Acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

d. (1) With respect to equipment that is three-year property, as described in subsection (e) of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. §168, which is disposed of or ceases to be qualified equipment prior to the end of the 36 month period following being placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 36, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermi-

nation of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to 36.

(2) With respect to property other than that described in subparagraph (1) of this subsection which is disposed of or ceases to be qualified equipment prior to the end of the 60 month period following being placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 60, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to 60.

C.54:10A-5.19 Computation of tax credit.

4. a. A taxpayer allowed a credit under section 3 of P.L.1993, c.171 (C.54:10A-5.18), with respect to the investment credit base, shall be allowed a credit for the increase in employment by the taxpayer determined by the number of new employees for each of the two tax years next succeeding the tax year for which the credit under section 3 of P.L.1993, c.171 (C.54:10A-5.18), is allowed, in an amount equal to 3% of the investment credit base, not to exceed a maximum allowed amount for each of the two tax years of \$1,000 multiplied by the number of new employees.

b. The tax imposed for the tax year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit

allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), and then by any credit allowed pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the tax year of the credit allowed pursuant to section 3 of P.L.1993, c.171 (C.54:10A-5.18), to which the credit under this section relates and then by the order of the credits' tax years. The amount of the credits applied under this section and section 3 of P.L.1993, c.171 (C.54:10A-5.18), 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. The amount of tax year credit otherwise allowable under subsection a. of 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 seven tax years following a credit's tax year. Provided however, that a taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation; provided further, however, that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. "Acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

d. (1) With respect to equipment that is three-year property, as described in subsection (e) of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. §168, which is disposed of or ceases to be qualified equipment prior to the end of the 36 month period following being placed in service in this State, the amount

of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 36, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to 36.

(2) With respect to property other than that described in subparagraph (1) of this subsection which is disposed of or ceases to be qualified equipment prior to the end of the 60 month period following being placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 60, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to 60.

C.54:10A-5.20 Maintenance of records.

5. a. A taxpayer that claims credit under this act shall maintain sufficient records to establish the following facts for each item of qualified equipment:

- (1) its identity;
- (2) its actual or reasonably determined cost;
- (3) its useful depreciation life;
- (4) the month and tax year in which it was placed in service;
- (5) the amount of credit taken; and
- (6) the date it was disposed of or otherwise ceased to be qualified equipment.

b. A taxpayer that does not keep records required for identification of qualified equipment shall be treated as having disposed of, during the tax year, any qualified equipment which the taxpayer cannot establish was still on hand in this State at the end of that year.

c. If a taxpayer cannot establish when qualified equipment reported for purposes of claiming this credit during a tax year was placed in service, the taxpayer shall be treated as having placed it in service in the most recent prior year in which similar property was placed in service unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer shall be treated as having placed the property in service in the next most recent year.

d. The burden of proof shall be on a taxpayer to establish by a preponderance of the evidence that the taxpayer is entitled to the credit allowed pursuant to this act.

C.54:10A-5.21 Required reports.

6. The Director of the Division of Taxation shall prepare and transmit to the Governor, the Legislature, and the State Revenue Forecasting Advisory Commission on or before the September 1 next following the January 1 next following enactment of this section and annually on or before each September 1 thereafter, a report concerning the revenue cost and distributional impact of this act in such a manner as to facilitate an evaluation of its costs in State tax revenue forgone and its benefits in new job creation. To facilitate an understanding of the gross amount and percentage of credits claimed in relation to the size, number and income of corporations and the number of new employees, the report shall include statistical analyses of the number and value of credits granted and anticipated to be granted, and the number of new employees. To facilitate an understanding of the distinction between the number of new employees resulting from the availability of the credits and the number of new employees not resulting from availability of the credits, the report shall include statistics concerning the mean cost, in State tax revenue forgone, of provid-

ing the credits resulting in employment of a single full-time employee in specific industries, the relative rate of increase in the number of new employees between corporations using the credit and those not using the credit, and increases in employment in the State and the region. The director shall include in the report such further observations and recommendations about the use or administration of the credit as the director deems appropriate.

The State Revenue Forecasting Advisory Commission shall prepare and transmit to the Governor and Legislature, on or before the November 1 next following the January 1 next following the enactment of this section and biennially on or before each second November 1 thereafter, a report providing a cost-benefit analysis of the credits provided under this act and the retention and stimulation of employment in the manufacturing sector, together with its recommendations as to whether the credits provided under this act should remain permanent.

7. Notwithstanding the provisions of subsection (g) of R.S.43:21-11 to the contrary, the Commissioner of the Department of Labor shall provide the Director of the Division of Taxation such copies of the quarterly reports filed by taxpayers with the Department of Labor pursuant to subparagraph (A) of paragraph (2) of subsection (a) of R.S.43:21-14 as the director may request to verify the qualifications of the taxpayers to the credits allowed under this act. The director shall not use the reports provided for any purpose other than the administration of the credits allowed under this act, and reports so provided shall be deemed files and records of the director pursuant to R.S.54:50-8.

8. The director shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the purpose of this act.

9. This act shall take effect immediately and sections 1 through 7 shall apply to tax years beginning on and after the January 1 next following their enactment.

Approved July 7, 1993.

CHAPTER 172

AN ACT concerning depreciation deductions under the corporation business tax, amending P.L.1945, c.162.

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

1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read as follows:

C.54:10A-4 Definitions.

4. For the purposes of this act, unless the context requires a different meaning:

(a) "Commissioner" shall mean the Director of the Division of Taxation of the State Department of the Treasury.

(b) "Allocation factor" shall mean the proportionate part of a taxpayer's net worth or entire net income used to determine a measure of its tax under this act.

(c) "Corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits

or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing aggregate of values shall also be reduced by retained earnings of the international banking facility. Retained earnings means the earnings accumulated over the life of such facility and shall not include the pro rata share of dividends paid and federal income taxes paid or payable during the tax year.

If in the opinion of the commissioner, the corporation's books do not disclose fair valuations the commissioner may make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets, exclusive of subsidiary investments as defined aforesaid, carried on the books of the corporation, in accordance with sound accounting principles, and such determination shall be used as net worth for the purpose of this act.

(e) "Indebtedness owing directly or indirectly" shall include, without limitation thereto, all indebtedness owing to any stockholder or shareholder and to members of his immediate family where a stockholder and members of his immediate family together or in the aggregate own 10% or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(f) "Investment company" shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least 90% thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account, but this shall not include any corporation which: (1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than 90% of its average gross assets in New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its report; or (3) is a banking corporation or a financial business corporation as defined in the Corporation Business Tax Act.

(g) "Regulated investment company" shall mean any corporation which for a period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended.

(h) "Taxpayer" shall mean any corporation required to report or to pay taxes, interest or penalties under this act.

(i) "Fiscal year" shall mean an accounting period ending on any day other than the last day of December on the basis of which the taxpayer is required to report for federal income tax purposes.

(j) Except as herein provided, "privilege period" shall mean the calendar or fiscal accounting period for which a tax is payable under this act.

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income,

(1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

(2) Entire net income shall be determined without the exclusion, deduction or credit of:

(A) The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations;

(B) Any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in paragraph (5) of subsection (k) of this section;

(C) Taxes paid or accrued to the United States on or measured by profits or income, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section;

(D) (Deleted by amendment, P.L.1985, c.143.)

(E) 90% of interest on indebtedness owing directly or indirectly to holders of 10% or more of the aggregate outstanding shares of

the taxpayer's capital stock of all classes; except that such interest may, in any event, be deducted:

- (i) Up to an amount not exceeding \$1,000.00;
- (ii) In full to the extent that it relates to bonds or other evidences of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization, to persons, who, prior to such reorganization, were bona fide creditors of the corporation or its predecessors, but were not stockholders or shareholders thereof;
- (iii) In full to the extent that it relates to debt of a financial business corporation owed to an affiliate corporation; provided that such interest rate does not exceed 2% over prime rate; the prime rate to be determined by the Commissioner of Banking;
- (iv) In full to the extent that it relates to financing of motor vehicle inventory held for sale to customers; provided said indebtedness is owed to a taxpayer customarily and routinely providing this type of financing;
- (v) In full to the extent it relates to debt of a banking corporation to a bank holding company, of which the banking corporation is a subsidiary, or to a debt of a banking corporation to another banking corporation with respect to federal funds transactions governed by section 23A of the Federal Reserve Act (12 U.S.C. §371c.) when both banking corporations are subsidiaries of the same bank holding company, as defined in 12 U.S.C. §1841.

(F) (i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c.172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981.

(ii) For the periods set forth in subparagraph (F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which the taxpayer claimed as a deduction in computing

federal income tax pursuant to a qualified lease agreement under paragraph (8) of that section.

The director shall promulgate rules and regulations necessary to carry out the provisions of this section, which rules shall provide, among others, the manner in which the remaining life of property shall be reported.

(G) (1) The amount of any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

(2) The amount of treble damages paid to the Department of Environmental Protection and Energy pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, the discharge.

(3) The commissioner may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

(4) There shall be allowed as a deduction from entire net income of a banking corporation, to the extent not deductible in determining federal taxable income, the eligible net income of an international banking facility determined as follows:

(A) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses;

(B) Eligible gross income shall be the gross income derived by an international banking facility, which shall include, but not be limited to, gross income derived from:

(i) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(ii) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities;

(iii) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph; or

(iv) Such other activities as an international banking facility may, from time to time, be authorized to engage in;

(C) Applicable expenses shall be any expense or other deductions attributable, directly or indirectly, to the eligible gross income described in subparagraph (B) of this paragraph.

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. With respect to other dividends, entire net income shall not include 50% of the total included in computing such taxable income for federal income tax purposes.

(6) (A) Net operating loss deduction. There shall be allowed as a deduction for the taxable year the net operating loss carryover to that year.

(B) Net operating loss carryover. A net operating loss for any taxable year ending after June 30, 1984 shall be a net operating loss carryover to each of the seven years following the year of the loss. The entire amount of the net operating loss for any taxable year (the "loss year") shall be carried to the earliest of the taxable years to which the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss

deduction provided by subparagraph (A) of this paragraph, for each of the prior taxable years to which the loss may be carried.

(C) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income without the net operating loss deduction provided for in subparagraph (A) of this paragraph and the exclusions in paragraphs (4) and (5) of this subsection.

(D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

(l) "Real estate investment trust" shall mean any corporation, trust or association qualifying and electing to be taxed as a real estate investment trust under federal law.

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons

not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. §2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

(n) "International banking facility" shall mean a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such terms are defined in section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the board of governors of the Federal Reserve System, 12 CFR Part 204, effective December 3, 1981. In the event that the United States enacts a law, or the board of governors of the Federal Reserve System adopts a regulation which amends the present definition of international banking facility or of such facilities' time deposits or extensions of credit, the Commissioner of Banking shall forthwith adopt regulations defining such terms in the same manner as such terms are set forth in the laws of the United States or the regulations of the board of governors of the Federal Reserve System. The regulations of the Commissioner of Banking shall thereafter provide the applicable definitions.

2. This act shall take effect immediately.

Approved July 7, 1993.

CHAPTER 173

AN ACT concerning the taxation of certain corporations, the shareholders of those corporations, and tax information reporting, amending and supplementing P.L.1945, c.162, and Title 54A of the New Jersey Statutes.

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

1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read as follows:

C.54:10A-4 Definitions.

4. For the purposes of this act, unless the context requires a different meaning:

(a) "Commissioner" shall mean the Director of the Division of Taxation of the State Department of the Treasury.

(b) "Allocation factor" shall mean the proportionate part of a taxpayer's net worth or entire net income used to determine a measure of its tax under this act.

(c) "Corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits

or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing aggregate of values shall also be reduced by retained earnings of the international banking facility. Retained earnings means the earnings accumulated over the life of such facility and shall not include the distributive share of dividends paid and federal income taxes paid or payable during the tax year.

If in the opinion of the commissioner, the corporation's books do not disclose fair valuations the commissioner may make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets, exclusive of subsidiary investments as defined aforesaid, carried on the books of the corporation, in accordance with sound accounting principles, and such determination shall be used as net worth for the purpose of this act.

(e) "Indebtedness owing directly or indirectly" shall include, without limitation thereto, all indebtedness owing to any stockholder or shareholder and to members of his immediate family where a stockholder and members of his immediate family together or in the aggregate own 10% or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(f) "Investment company" shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least 90% thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account, but this shall not include any corporation which: (1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than 90% of its average gross assets in New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its report; or (3) is a banking corporation or a financial business corporation as defined in the Corporation Business Tax Act.

(g) "Regulated investment company" shall mean any corporation which for a period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended.

(h) "Taxpayer" shall mean any corporation required to report or to pay taxes, interest or penalties under this act.

(i) "Fiscal year" shall mean an accounting period ending on any day other than the last day of December on the basis of which the taxpayer is required to report for federal income tax purposes.

(j) Except as herein provided, "privilege period" shall mean the calendar or fiscal accounting period for which a tax is payable under this act.

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets. For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its federal income tax; provided, however, that in the determination of such entire net income,

(1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

(2) Entire net income shall be determined without the exclusion, deduction or credit of:

(A) The amount of any specific exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations;

(B) Any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in paragraph (5) of subsection (k) of this section;

(C) Taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section;

(D) (Deleted by amendment, P.L.1985, c.143.)

(E) 90% of interest on indebtedness owing directly or indirectly to holders of 10% or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes; except that such interest may, in any event, be deducted:

(i) Up to an amount not exceeding \$1,000.00;

(ii) In full to the extent that it relates to bonds or other evidences of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization, to persons, who, prior to such reorganization, were bona fide creditors of the corporation or its predecessors, but were not stockholders or shareholders thereof;

(iii) In full to the extent that it relates to debt of a financial business corporation owed to an affiliate corporation; provided that such interest rate does not exceed 2% over prime rate; the prime rate to be determined by the Commissioner of Banking;

(iv) In full to the extent that it relates to financing of motor vehicle inventory held for sale to customers; provided said indebtedness is owed to a taxpayer customarily and routinely providing this type of financing;

(v) In full to the extent it relates to debt of a banking corporation to a bank holding company, of which the banking corporation is a subsidiary, or to a debt of a banking corporation to another banking corporation with respect to federal funds transactions governed by section 23A of the Federal Reserve Act (12 U.S.C. §371c.) when both banking corporations are subsidiaries of the same bank holding company, as defined in 12 U.S.C. §1841.

(F)(i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c.172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981.

(ii) For the periods set forth in subparagraph (F)(i) of this subsection, any amount, except with respect to qualified mass

commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which the taxpayer claimed as a deduction in computing federal income tax pursuant to a qualified lease agreement under paragraph (8) of that section.

The director shall promulgate rules and regulations necessary to carry out the provisions of this section, which rules shall provide, among others, the manner in which the remaining life of property shall be reported.

(G) (1) The amount of any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

(2) The amount of treble damages paid to the Department of Environmental Protection and Energy pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, the discharge.

(3) The commissioner may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

(4) There shall be allowed as a deduction from entire net income of a banking corporation, to the extent not deductible in determining federal taxable income, the eligible net income of an international banking facility determined as follows:

(A) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses;

(B) Eligible gross income shall be the gross income derived by an international banking facility, which shall include, but not be limited to, gross income derived from:

(i) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(ii) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities;

(iii) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph; or

(iv) Such other activities as an international banking facility may, from time to time, be authorized to engage in;

(C) Applicable expenses shall be any expense or other deductions attributable, directly or indirectly, to the eligible gross income described in subparagraph (B) of this paragraph.

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. With respect to other dividends, entire net income shall not include 50% of the total included in computing such taxable income for federal income tax purposes.

(6)(A) Net operating loss deduction. There shall be allowed as a deduction for the taxable year the net operating loss carryover to that year.

(B) Net operating loss carryover. A net operating loss for any taxable year ending after June 30, 1984 shall be a net operating loss carryover to each of the seven years following the year of the loss. The entire amount of the net operating loss for any taxable year (the "loss year") shall be carried to the earliest of the taxable years to which the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be

the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior taxable years to which the loss may be carried.

(C) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income without the net operating loss deduction provided for in subparagraph (A) of this paragraph and the exclusions in paragraphs (4) and (5) of this subsection.

(D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

(I) "Real estate investment trust" shall mean any corporation, trust or association qualifying and electing to be taxed as a real estate investment trust under federal law.

(m) "Financial business corporation" shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise

employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall "financial business" include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L. 92-181 (12 U.S.C. § 2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

(n) "International banking facility" shall mean a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such terms are defined in section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the board of governors of the Federal Reserve System, 12 CFR Part 204, effective December 3, 1981. In the event that the United States enacts a law, or the board of governors of the Federal Reserve System adopts a regulation which amends the present definition of international banking facility or of such facilities' time deposits or extensions of credit, the Commissioner of Banking shall forthwith adopt regulations defining such terms in the same manner as such terms are set forth in the laws of the United States or the regulations of the board of governors of the Federal Reserve System. The regulations of the Commissioner of Banking shall thereafter provide the applicable definitions.

(o) "S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. § 1361.

(p) "New Jersey S corporation" means a corporation that is an S corporation; which has made a valid election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

2. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read as follows:

C.54:10A-5 Franchise tax.

5. The franchise tax to be annually assessed to and paid by each taxpayer shall be the sum of the amount computed under subsection (a) hereof, or in the alternative to the amount computed under subsection (a) hereof, the amount computed under subsection (f) hereof, and the amount computed under subsection (c) hereof:

(a) That portion of its entire net worth as may be allocable to this State as provided in section 6, multiplied by the following rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net worth; 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar on all amounts of allocated net worth in excess of \$300,000,000.00; provided, however, that with respect to reports covering accounting or privilege periods set forth below, the rate shall be that percentage of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege Periods Beginning on or After:	The Percentage of the Rate to be Imposed Shall Be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

(b) (Deleted by amendment, P.L.1968, c.250, s.2.)

(c) (1) For a taxpayer that is not a New Jersey S corporation, 3 1/4% of its entire net income or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4 1/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%.

(2) For a taxpayer that is a New Jersey S corporation, the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the taxable period from the tax rate pro-

vided under paragraph (1) of this subsection for the taxable period multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); plus

(3) For a taxpayer that is a New Jersey S corporation, the tax rate provided under paragraph (1) of this subsection for the taxable period multiplied by any of its entire net income that is subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

(d) Provided, however, that the franchise tax to be annually assessed to and paid by any investment company or real estate investment trust, which has elected to report as such and has filed its return in the form and within the time provided in this act and the rules and regulations promulgated in connection therewith, shall, in the case of an investment company, be measured by 25% of its entire net income and 25% of its entire net worth, and in the case of a real estate investment trust, by 4% of its entire net income and 15% of its entire net worth, at the rates hereinbefore set forth for the computation of tax on net income and net worth, respectively, but in no case less than \$250.00, and further provided, however, that the franchise tax to be annually assessed to and paid by a regulated investment company which for a period covered by its report satisfies the requirements of Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal Revenue Code shall be \$250.00.

(e) The tax assessed to any taxpayer pursuant to this section shall not be less than \$25.00 in the case of a domestic corporation, \$50.00 in the case of a foreign corporation, or \$250.00 in the case of an investment company or regulated investment company.

Provided however, that for accounting or privilege periods beginning in calendar year 1994 and thereafter the minimum taxes for taxpayers other than an investment company or a regulated investment company shall be as provided in the following schedule:

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	\$50	\$100
1995	\$100	\$200
1996	\$150	\$200
1997	\$200	\$200

and provided further that the director shall adjust the minimum tax for accounting or privilege periods beginning in each fifth year following calendar year 1997 and each fifth year thereafter by multiplying the minimum tax for periods beginning in 1997 by an amount equal to one plus 75% of the increase, if any, in the annual average total producer price index for finished goods published by the federal Department of Labor, Bureau of Labor Statistics, for the year preceding the determination year over such index for calendar year 1996.

(f) In lieu of the portion of the tax based on net worth and to be computed under subsection (a) of this section, any taxpayer, the value of whose total assets everywhere, less reasonable reserves for depreciation, as of the close of the period covered by its report, amounts to less than \$150,000.00, may elect to pay the tax shown in a table which shall be promulgated by the director.

C.54:10A-5.22 Election as a New Jersey S corporation.

3. a. A corporation may elect, in accordance with the provisions of this section, to be a New Jersey S corporation. In order for an election to be valid, the corporation and each of its shareholders on the day on which the election is made (hereinafter "initial shareholders") must consent to such election and the jurisdictional requirements of becoming a New Jersey S corporation. The form of the election and consent to jurisdictional requirements and the place for filing shall be as prescribed by the Director of the Division of Taxation.

b. Each initial shareholder and the corporation shall consent to the following jurisdictional requirements:

(1) That this State shall have the right and jurisdiction to tax and collect the tax on each shareholder's S corporation income as defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10);

(2) That New Jersey's right and jurisdiction to tax the income as set forth in paragraph (1) of this subsection shall not be affected by a change of a shareholder's residency, except as provided by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

(3) If shareholders that are not initial shareholders of the corporation, while the corporation is a New Jersey S corporation, fail to consent to New Jersey's jurisdiction to tax S corporation income to such shareholders, this State shall have the right and jurisdiction to collect a payment of tax each year directly from the corporation equal to the S corporation income allocated to this State, as defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting shareholders for the account-

ing or privilege period multiplied by the maximum tax bracket rate provided under N.J.S.54A:2-1 for the accounting or privilege period. In such case, the corporation shall have the right, but not the obligation, to recover payments made by the corporation pursuant to this paragraph from each nonconsenting shareholder.

c. A corporation may make an election to become a New Jersey S corporation with respect to an accounting or privilege period for which the corporation is or will be an S corporation. The election for an accounting or privilege period, along with the consents to jurisdictional requirements, shall be filed within one calendar month of the time at which a federal S corporation election would be required if such accounting or privilege period were a "taxable year" for which a federal S corporation election were to be made pursuant to section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1362. Such elections may only be revoked pursuant to subsection d. of this section. Such election shall terminate immediately upon the corporation's failure to satisfy the definition of a New Jersey S corporation pursuant to paragraph (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).

d. A corporation may revoke an election pursuant to this section on or before the last day of the first accounting or privilege period to which the election would otherwise apply.

C.54:10A-5.23 Requirements for New Jersey S corporation.

4. a. With respect to each of its shareholders that is not an initial shareholder, a New Jersey S corporation shall satisfy the requirements of either paragraph b. or c. of this section.

b. Deliver a consent to the jurisdictional requirements as set forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-5.22).

c. Make payments to the Director of the Division of Taxation on behalf of each nonconsenting shareholder in an amount equal to the shareholder's pro rata share of S corporation income allocated to this State, as defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10), reflected on the corporation's return for the accounting or privilege period, multiplied by the maximum tax bracket rate provided under N.J.S.54A:2-1 in effect at the end of the accounting or privilege period. The payments shall be made no later than the time for filing of the return for the accounting or privilege period. The director may, by regulation, require that amounts estimated to be equal to the liability expected to be due pursuant to this subsection be withheld from any distribution made to a nonconsenting shareholder.

d. If a shareholder that is not an initial shareholder of a New Jersey S corporation fails to deliver a consent to the jurisdictional

requirements set forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to withhold payments pursuant to subsection c. of this section, then this State shall have the right and jurisdiction to collect a tax each year directly from the corporation equal to the pro rata share of the S corporation income allocated to this State, as defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting shareholder times the maximum tax bracket rate provided under N.J.S.54A:2-1 for the appropriate accounting or privilege period. In such case, the corporation shall have the right, but not the obligation, to recover payments made by the corporation pursuant to this subsection from each nonconsenting shareholder.

C.54:10A-6.1 "Operational income" defined; related corporate expenses not deductible; conditions; forms; rules.

5. a. "Operational income" subject to allocation to New Jersey means income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations and includes investment income serving an operational function. Income that a taxpayer demonstrates with clear and cogent evidence is not operational income is classified as nonoperational income, and the nonoperational income of taxpayers, other than those that have their principal place from which the trade or business of the taxpayer is directed or managed in this State, is not subject to allocation.

b. Corporate expenses related to nonoperational income are not deductible in determining entire net income. Notwithstanding the provisions of R.S.54:49-6 or any other law to the contrary:

(1) if in prior privilege periods property had been classified as operational property, and later is demonstrated to have been nonoperational property and is subsequently disposed of, all expenses, without limitation, deducted for prior privilege periods related to such nonoperational property shall be added back and recaptured as income in the period of disposition of such property;

(2) if in prior privilege periods income had been classified as serving an operational function, and later is demonstrated not to have been serving an operational function, all expenses, without limitation, deducted in prior privilege periods related to such income not serving an operational function shall be added back and recaptured as income; and

(3) the denominators of the fractions used to determine the allocation factor pursuant to section 6 of P.L.1945, c.162 (C.54:10A-

6), for privilege periods for which redeterminations are required pursuant to paragraphs (1) and (2) of this subsection shall be redetermined to exclude the amounts, if any, relating to the non-operational property or the nonoperational income.

c. The Director of the Division of Taxation shall prescribe such forms for administration and adopt such administrative rules as the director deems necessary for the implementation of this section.

6. Section 18 of P.L.1945, c.162 (C.54:10A-18) is amended to read as follows:

C.54:10A-18 Forms; certification; S corporation returns.

18. a. The commissioner shall design a form of return and forms for such additional statements or schedules as he may require to be filed therewith. Such forms shall provide for the setting forth of such facts as the commissioner may deem necessary for the proper enforcement of this act. He shall cause a supply thereof to be printed and shall furnish appropriate blank forms to each taxpayer upon application or otherwise as he may deem necessary. Failure to receive a form shall not relieve any taxpayer from the obligation to file a return under the provisions of this act. Each such return shall have annexed thereto a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer of the taxpayer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. In the case of a corporation in liquidation or in the hands of a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of such corporation.

b. The return of an S corporation shall, in addition to any information set forth pursuant to subsection a. of this section, set forth with respect to each shareholder: the shareholder's name, address and federal taxpayer identification number (social security number or employer identification number); whether the shareholder is a resident of this State; whether the shareholder has filed a consent to jurisdictional requirements pursuant to section 3 or section 4 of P.L.1993, c.173 (C.54:10A-5.22 or C.54:10A-5.23); the allocation factor determined pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10); the amount of any distribution made to the shareholder, including any amount paid on behalf of

the shareholder pursuant to subsection c. or d. of section 4 of P.L.1993, c.173 (C.54:10A-5.23); the balance of the accumulated earnings and profits account; the balance of the accumulated adjustments account described in section 16 of P.L.1993, c.173 (C.54A:5-14), which account the corporation shall maintain; and such other information as the director may prescribe by regulation. The S corporation shall, on or before the day on which such return is required to be filed, furnish to each person who was a shareholder during the accounting or privilege period a copy of such information shown on the return as the director may by regulation prescribe.

7. N.J.S.54A:4-1 is amended to read as follows:

Resident credit for tax of another state.

54A:4-1. Resident credit for tax of another state. (a) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this act, except as provided by subsections (c) and (d) of this section.

(b) The credit provided under this section shall not exceed the proportion of the tax otherwise due under this act that the amount of the taxpayer's income subject to tax by the other jurisdiction bears to his entire New Jersey income.

(c) No credit shall be allowed against the tax otherwise due under this act for the amount of any income tax or wage tax imposed for the taxable year on S corporation income allocated to this State.

(d) No credit shall be allowed for the amount of any taxes paid or accrued for the taxable year on or measured by profits or income imposed on or paid on behalf of a person other than the taxpayer, whether or not the taxpayer may be held liable for the tax.

(e) Readjustment of the tax of another state or political subdivision thereof--if the taxpayer is allowed credit under this section for more or less of the tax of another state or political subdivision thereof than he is finally required to pay, the taxpayer shall send notice of the difference to the director who shall redetermine the tax for any years affected regardless of any otherwise applicable statute of limitations.

8. N.J.S.54A:4-2 is amended to read as follows:

Credit for taxes withheld, paid by S corporation.

54A:4-2. Credit for taxes withheld. a. Any amount of tax actually deducted and withheld by an employer under this act in any calen-

dar year shall be deemed to have been paid to the director on behalf of the person from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year. For a taxable year of less than 12 months, the credit shall be made under regulations of the director.

b. An amount of tax actually paid to the director by an S corporation pursuant to subsection c. of section 4 of P.L.1993, c.173 (C.54:10A-5.23), shall be credited to the shareholder of the S corporation on whose behalf the payment was made as of the date of its receipt by the director, except as otherwise provided by N.J.S.54A:9-11, and the shareholder shall be credited with having paid that amount of tax for the taxable year in which the S corporation's accounting or privilege period ends.

9. N.J.S.54A:5-1 is amended to read as follows:

New Jersey gross income defined.

54A:5-1. New Jersey Gross Income Defined. New Jersey gross income shall consist of the following categories of income:

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property.

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that

resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator; and

(3) treble damages paid to the Department of Environmental Protection and Energy pursuant to subsection a. of section 7 of P.L.1976, c.141 (C.58:10-23.11f) for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon the failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, a discharge.

c. Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting allowed for federal income tax purposes. For the purpose of determining gain or loss, the basis of property shall be the adjusted basis used for federal income tax purposes, except as expressly provided for under this act, but without a deduction for penalties, fines, or economic benefits excepted pursuant to paragraph (2), or for treble damages excepted pursuant to paragraph (3) of subsection b. of this section.

A taxpayer's net gain or loss on the sale, exchange or other disposition of a share of an S corporation shall be calculated by increasing the adjusted basis of the share by an amount equal to the shareholder's net losses and deductions in respect of the share allowed and deducted from income for federal income tax purposes, not including any personal net operating loss deductions, to the extent that such net losses were not offset by the taxpayer's pro rata share of S corporation income otherwise subject to taxation pursuant to subsection p. of this section in respect of another S corporation, subject to rules of priority and assignment determined by the director.

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

- (i) A statutory merger or consolidation;
- (ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);
- (iii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;
- (iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;
- (v) A recapitalization;
- (vi) A mere change in identity, form, or place of organization however effected; or

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as “controlling corporation”) which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the “controlling corporation”) which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

For purposes of this clause, the term “control” means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

For purposes of this clause, the term “a party to a reorganization” includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term “a party to a reorganization” includes the controlling corporation referred to in such subclause (vii).

Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer’s basis for the stock or securities received shall be the same as the taxpayer’s actual or attributed basis for the stock, securities or property surrendered in exchange therefor.

d. Net gains or net income derived from or in the form of rents, royalties, patents, and copyrights.

e. Interest, except interest referred to in clause (1) or (2) of N.J.S.54A:6-14, or distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

f. Dividends. "Dividends" means any distribution in cash or property made by a corporation, association or business trust that is not an S corporation, (1) out of accumulated earnings and profits, or (2) out of earnings and profits of the year in which such dividend is paid and any distribution in cash or property made by an S corporation, as specifically determined pursuant to section 16 of P.L.1993, c.173 (C.54A:5-14).

The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

g. Gambling winnings.

h. Net gains or income derived through estates or trusts.

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes and pensions and annuities except to the extent of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income.

l. Amounts received as prizes and awards, except as provided in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children.

o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.

p. Net pro rata share of S corporation income.

10. N.J.S.54A:5-8 is amended to read as follows:

Income from sources within this State for nonresident.

54A:5-8. Income from sources within this State for a nonresident individual, estate or trust means the income from the

categories of gross income enumerated and classified under chapter 5 of this act to the extent that it is earned, received or acquired from sources within this State:

- (1) By reason of ownership or disposition of any interest in real or tangible personal property in this State; or
- (2) In connection with a trade, profession, occupation carried on in this State or for the rendition of personal services performed in this State; or
- (3) As a distributive share of the income of an unincorporated business, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this State except as allocated to another state pursuant to regulations promulgated by the director under this act; or
- (4) From intangible personal property employed in a trade, profession, occupation or business carried on in this State; or
- (5) As a result of any lottery or wagering transaction in this State other than that excluded from taxation pursuant to N.J.S.54A:6-11; or
- (6) As S corporation income allocated to this State of a New Jersey S corporation.

Income from sources within this State for a nonresident individual shall not include income from pensions and annuities as set forth in subsection j. of N.J.S.54A:5-1.

C.54A:5-9 Taxation of S corporation shareholders.

11. An S corporation as such shall not be subject to the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S corporation income, dividends and gain of a shareholder of an S corporation shall be subject to the tax, and the tax shall be imposed on the shareholder's pro rata share, whether or not distributed, of the S corporation income for its taxable year ending within or with the shareholder's taxable year.

C.54A:5-10 Definitions.

12. For the purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.:

"New Jersey S corporation" means a corporation that is an S corporation; which has made a valid election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

"Pro rata share" means the portion of any items attributable to an S corporation shareholder for a taxable year determined in the manner provided in, and subject to any election made under subsection

(a) of section 1377 or subsection (e) of section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1377 and §1362.

“Pro rata share of S corporation income” means the sum of the shareholder’s proportionate share of:

For a New Jersey S corporation, the S corporation income allocated to this State of all New Jersey S corporations; and the S corporation income not allocated to this State.

“S corporation” means a corporation included in the definition of an “S corporation” pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1361.

“S corporation income” means the net of an S corporation’s items of income, loss or deduction taken into account by the shareholder in the manner provided in section 1366 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1366; provided however that:

a. S corporation income shall be determined without the exclusion, deduction or credit of:

(1) any dividend exclusion or deduction otherwise allowed pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4);

(2) taxes paid or accrued to the United States, a possession or territory of the United States, a state including this State, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity, of the corporation;

(3) any income taxes paid or accrued to the United States, a possession or territory of the United States, a state including this State, a political subdivision thereof, or the District of Columbia paid or accrued by the S corporation on behalf of, or in satisfaction of the liabilities of, shareholders of the corporation;

(4) interest income on obligations of any state other than this State, or of a political subdivision thereof, or of the federal government, except as deducted pursuant to subsection b. of this section; or

(5) interest on indebtedness incurred or continued, expenses paid and incurred to purchase, carry, manage or conserve, and expenses of collection of the income or gain from obligations the income or gain from which is deductible pursuant to subsection b. of this definition; and

b. S corporation income shall be determined after deduction of any gains or income derived from obligations which are referred to in N.J.S.54A:6-14 or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from gross income

pursuant to N.J.S.54A:6-14, or distributions excluded from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1); and

c. The character of any S corporation item taken into account by a shareholder of an S corporation shall be determined as if such items were received or incurred by the S corporation and not its shareholder.

“S corporation income allocated to this State” means that portion of the S corporation income that is allocated to this State by the allocation factor of the corporation for the fiscal or calendar accounting period pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax imposed pursuant to paragraph (3) of subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5).

“S corporation income not allocated to this State” means S corporation income less S corporation income allocated to this State.

C.54A:5-11 Initial basis of shareholder of S corporation stock.

13. a. A resident shareholder of S corporation stock held by the shareholder on the first day of the first taxable year following enactment of this section shall have an initial basis in the stock of that S corporation and any indebtedness of the S corporation equal to the basis of the stock determined as though the stock was stock of a corporation not an S corporation plus any indebtedness of the S corporation to the shareholder and shall be determined as of the first day of the first taxable year following enactment of this section

b. A resident shareholder of S corporation stock to which subsection a. of this section does not apply shall have an initial basis in the stock of the S corporation and any indebtedness of the S corporation as determined pursuant to the federal Internal Revenue Code of 1986, determined as of the date that is the latest to occur of: the date on which the shareholder last became a resident of this State; the date on which the shareholder acquired the stock of the corporation; or the effective date of the corporation's most recent S election under the federal Internal Revenue Code of 1986.

c. The initial basis of a resident shareholder in the stock and indebtedness of an S corporation shall be adjusted after the date specified in subsections a. or b. of this section in the manner required by section 1011 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1011, except that such adjustments shall be limited to that portion of S corporation income allocated to this State and S corporation income not allocated to this State that is included in the shareholder's pro rata share of S corporation

income and except that, with respect to any taxable period during which the shareholder is a resident of this State:

(1) any modification made pursuant to the definition of S corporation income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) other than those for income exempt from taxation by this State pursuant to paragraph (5) of subsection a. and subsection b. of that definition shall be taken into account; and

(2) any adjustments made pursuant to section 1367 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1367, for a taxable period during which this State did not measure the income of a shareholder of an S corporation by reference to the S corporation's income shall not be taken into account.

d. A nonresident shareholder of S corporation stock shall have an initial basis in the stock of the S corporation and any indebtedness of the S corporation of zero as of the date that is the latest to occur of: the date on which the shareholder last became a nonresident of this State; the date on which the shareholder acquired the stock of the corporation; the effective date of the corporation's most recent S election under the federal Internal Revenue Code of 1986; or the effective date of the corporation's most recent election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

e. The initial basis of a nonresident shareholder in the stock and indebtedness of an S corporation shall be adjusted after the date specified in subsection d. of this section as provided in section 1367 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1367, except that such adjustments shall be limited to that portion of S corporation income allocated to this State that is included in the shareholder's pro rata share of S corporation income. In computing S corporation income allocated to this State any modification made pursuant to the definition of S corporation income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) for income exempt from taxation by this State pursuant to paragraph (5) of subsection a. and subsection b. of that definition shall not be taken into account.

f. The basis in the hands of a resident shareholder of an S corporation in stock of the S corporation shall be reduced by the amount of any cash distribution which is not taxable to the shareholder as a result of the application of section 16 of P.L.1993, c.173 (C.54A:5-14).

g. For purposes of this section, any person acquiring stock or indebtedness of an S corporation by gift shall be considered to have acquired the stock or indebtedness at the time the donor acquired the stock or indebtedness.

C.54A:5-12 Limits on shareholder's losses.

14. a. The aggregate amount of losses or deductions of an S corporation taken into account by a shareholder of the S corporation for a taxable period pursuant to section 11 of P.L.1993, c.173 (C.54A:5-9), shall not exceed the shareholder's combined adjusted basis, determined in accordance with section 13 of P.L.1993, c.173 (C.54A:5-11), in the stock of the S corporation and any indebtedness of the S corporation to the shareholder.

b. Any loss or deduction of an S corporation which is disallowed for a taxable period pursuant to subsection a. of this section shall not be treated as incurred by the corporation in any succeeding taxable period with respect to that shareholder.

C.54A:5-13 Shareholder's share of S corporation income prorated for periods of residence.

15. For purposes of this act, if a shareholder of an S corporation is both a resident and a nonresident of this State during any taxable year, the shareholder's pro rata share of the S corporation income allocated to this State and S corporation income not allocated to this State for the taxable period shall be further prorated between the shareholder's periods of residence and nonresidence during the taxable period, in accordance with the number of days in each period.

C.54A:5-14 Distributions made by S corporation, treatment.

16. a. Subject to subsection c. of this section, a distribution made by an S corporation with respect to its stock to a resident shareholder shall be taken into account by the shareholder for purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., to the extent that the distribution is treated as a dividend or as gain from the sale or exchange of property in the manner provided by section 1368 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1368.

b. Subject to subsection c. of this section, a distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period shall not be taken into account by the shareholder for purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in the manner provided by section 1371(e) of the federal Internal Revenue Code of 1986, 26 U.S.C. §1371.

c. In applying sections 1368 and 1371(e) of the federal Internal Revenue Code of 1986, 26 U.S.C. §§1368 and 1371, to any distribution referred to in subsection a. or b. of this section:

(1) the term "adjusted basis of the stock" means the shareholder's adjusted basis in the stock of the S corporation, as determined under section 13 of P.L.1993, c.173 (C.54A:5-11); and

(2) the term "accumulated adjustments account" means an amount that is equal to, and adjusted in the same manner as, the S corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the federal Internal Revenue Code of 1986, 26 U.S.C. §1368, except that any modifications required to be made pursuant to the definition of S corporation income shall be taken into account.

17. Section 3 of P.L.1977, c.273 (C.54A:6-15) is amended to read as follows:

C.54A:6-15 Other retirement income.

3. Other retirement income. a. Gross income shall not include income of up to \$10,000.00 for a married couple filing jointly, \$5,000.00 for a married person filing separately, or \$7,500.00 for an individual filing as a single taxpayer or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1, when received in any tax year by a person aged 62 years or older who received no income in excess of \$3,000.00 from one or more of the sources enumerated in subsections a., b., k. and p. of N.J.S.54A:5-1, provided, however, that the total exclusion under this subsection and that allowable under N.J.S.54A:6-10 shall not exceed the amounts of the exclusions set forth in this subsection.

b. In addition to the exclusion provided under N.J.S.54A:6-10 and subsection a. of this section, gross income shall not include income of up to \$6,000.00 for a married couple filing jointly or an individual determining tax pursuant to subsection a. of N.J.S.54A:2-1, or \$3,000.00 for a single person or a married person filing separately, who is not covered under N.J.S.54A:6-2 or N.J.S.54A:6-3, but who would be eligible in any year to receive payments under either section if he or she were covered thereby.

18. 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. Every partnership having a resident partner 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, principal residence address if applicable and telephone number of each partner of the partnership for taxable years ending after December 15, 1993. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. 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.

19. This act shall take effect immediately and sections 1 through 6 shall apply to fiscal or calendar accounting years beginning after enactment and sections 7 through 17 shall apply to taxable years beginning after enactment.

Approved July 7, 1993.

CHAPTER 174

AN ACT to repeal P.L.1966, c.136 (C.54:11A-1 et seq.), P.L.1977, c.4 (C.54:11A-3.1), P.L.1978, c.151 (C.54:11A-3.2 et seq.), section 7 of P.L.1989, c.2 (C.54:11A-6.1) and section 5 of P.L.1975, c.170 (C.54:11A-21).

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

Repealer.

1. The following acts and sections are repealed:
 - a. P.L.1966, c.136 (C.54:11A-1 et seq.);
 - b. P.L.1977, c.4 (C.54:11A-3.1);
 - c. P.L.1978, c.151 (C.54:11A-3.2 et seq.);
 - d. Section 5 of P.L.1975, c.170 (C.54:11A-21); and
 - e. Section 7 of P.L.1989, c.2 (C.54:11A-6.1).
2. The repeal of the acts and sections pursuant to subsections a., c. d. and e. of section 1 of this act shall not affect the obligation, lien, or duty to pay taxes, interest, or penalties which shall have accrued or may accrue by virtue of any assessment made or which may be made with respect to taxes levied upon personal property used in business on or before October 1, 1993, and all taxes and returns which would have been due and payable under the provisions of those acts and sections on February 15 and September 15, 1994, shall be due and payable on those dates as if the acts and sections were in effect. Notwithstanding any provisions of section 7 of P.L.1992, c.24 to the contrary, this act shall not affect any proceedings for the enforcement of any provision of the repealed acts or sections or any provisions of section 7 of P.L.1992, c.24 for liability accruing after June 29, 1992, nor shall this act affect the legal authority to assess and collect the taxes which may be, or may have been due and payable under the provisions of those acts or sections, together with interest or penalties which may have, or may accrue thereon.
3. This act shall take effect immediately, and section 1 shall apply to personal property used in business after October 1, 1993.

Approved July 7, 1993.

CHAPTER 175

AN ACT providing a credit under the corporation business tax for certain increased research activities, 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-5.24 Taxpayer credit for certain research activities.

1. a. A taxpayer shall be allowed a credit, subject to the provisions of subsection b. of this section, against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to

(1) 10% of the excess of the qualified research expenses for the fiscal or calendar accounting year (referred to hereafter in this section as the "tax year") over the base amount; and

(2) 10% of the basic research payments determined in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. §41, as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. §41 relating to termination shall not apply. Provided however, that the terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research" and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State.

b. No credit shall be allowed under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for property or expenditures for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

The tax imposed for a fiscal or calendar accounting year pursuant to section 5 of P.L.1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c.227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under section 3 of P.L.1993, c.170 (C.54:10A-5.6), and then by any credit allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or C.54:10A-5.19), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the

order of the credits' tax years. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for an accounting 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. The amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of this subsection may be carried over, if necessary, to the seven accounting years following a credit's tax year.

2. This act shall take effect immediately and apply to expenditures incurred in taxable years beginning on and after January 1, 1994.

Approved July 7, 1993.

CHAPTER 176

AN ACT establishing a Coastal Protection Technical Assistance Service at the Stevens Institute of Technology, amending P.L.1992, c.148, 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:64L-1 Coastal Protection Technical Assistance Service established.

1. a. There is established a Coastal Protection Technical Assistance Service (CPTAS) at the Stevens Institute of Technology. The purpose of the CPTAS shall be to provide, upon request, information and advice to counties and municipalities on coastal protection methods in order to assist coastal counties and municipalities in making decisions and undertaking projects to protect, preserve, restore, enhance, and create beaches, dunes, and other coastal area resources and in constructing and maintaining coastal protection structures and devices such as jetties, bulkheads, sea walls, groins, piers, and boardwalks.

b. The establishment of the CPTAS pursuant to subsection a. of this section shall become effective upon the signing of an agreement of acceptance thereof by the Stevens Institute of Technology with the Department of Environmental Protection and Energy.

C.18A:64L-2 Appointment, compensation of director.

2. The CPTAS shall be headed by a director to be appointed by the President of the Stevens Institute of Technology, after consultation with the governing bodies of the counties and municipalities in the coastal area of the State. The director shall receive such compensation as shall be determined by the President of the Stevens Institute of Technology.

C.18A:64L-3 Powers of director.

3. a. The director of the CPTAS shall appoint, within the limits of funds appropriated or otherwise provided therefor, qualified technical and clerical staff, who shall be employees of the Stevens Institute of Technology, and shall be entitled to all of the rights and benefits of other employees of that institution.

b. The director may, on behalf of the CPTAS, enter into agreements or contracts with the New Jersey Cooperative Extension Service, the New Jersey Sea Grant Extension Service, any public or private institution of higher education, or any other consultant or entity to assist the CPTAS in carrying out its duties pursuant to this act.

C.18A:64L-4 Duties of staff of service.

4. The director and staff of the CPTAS shall:

a. Establish a data base of information on available and promising new coastal protection methods and make this information available, upon request, to county and municipal governmental entities;

b. Evaluate, or cause to be evaluated, available and promising new coastal protection methods as to practicability, technical performance, and cost effectiveness;

c. Promote sharing of information on coastal protection methods between interested and knowledgeable parties and county and municipal governmental entities within the State;

d. Sponsor or conduct conferences, workshops, and demonstration projects to publicize successful coastal protection methods;

e. Identify problem areas in developing or implementing coastal protection methods, and encourage academic, corporate, or public efforts for their resolution;

f. Compile and disseminate, upon request, lists of engineering and other consulting services engaged in coastal protection work;

g. Promote, in consultation with the Department of Environmental Protection and Energy, demonstration projects for available and promising new coastal protection methods, and disseminate the results of such demonstration projects;

- h. Document and publicize successful coastal protection methods and projects;
- i. Provide information on available public and private funding sources for coastal protection efforts and projects;
- j. Provide general information on federal and State regulations concerning coastal protection efforts and projects;
- k. Collect and disseminate educational and training materials to assist county and municipal governmental employees with respect to undertaking or supervising coastal protection efforts or projects;
- l. Make on-site visits to coastal protection projects upon request of a county or municipal governmental entity, and make on-site assessments thereof;
- m. Provide, in consultation with the Department of Environmental Protection and Energy, extension services to county and municipal governmental entities concerning coastal protection, including, upon request, outreach and technical advice on coastal protection methods and projects; and
- n. Submit annually to the Legislature a review and evaluation of State and federal coastal protection programs and projects.

5. Section 1 of P.L.1992, c.148 (C.13:19-16.1) is amended to read as follows:

C.13:19-16.1 "Shore Protection Fund" created.

1. a. There is created in the Department of the Treasury a special non-lapsing fund to be known as the "Shore Protection Fund." The monies in the fund are dedicated and shall only be used to carry out the purposes enumerated in subsection b. of this section. The fund shall be credited with all revenues collected and deposited in the fund pursuant to section 4 of P.L.1968, c.49 (C.46:15-8), all interest received from the investment of monies in the fund, and any monies which, from time to time, may otherwise become available for the purposes of the fund. Pending the use thereof pursuant to the provisions of subsection b. of this section, the monies deposited in the fund shall be held in interest-bearing accounts in public depositories, as defined pursuant to section 1 of P.L.1970, c.236 (C.17:9-41), and may be invested or reinvested in such securities as are approved by the State Treasurer. Interest or other income earned on monies deposited into the fund shall be credited to the fund for use as set forth in this act for other monies in the fund.

b. Monies deposited in the "Shore Protection Fund" shall be used for shore protection projects associated with the protection, stabilization, restoration or maintenance of the shore, including monitoring

studies and land acquisition, consistent with the New Jersey Shore Protection Master Plan prepared pursuant to section 5 of P.L.1978, c.157, and may include the nonfederal share of any State-federal project, provided however that the Commissioner of Environmental Protection and Energy may, pursuant to appropriations made by law, allocate monies deposited in the fund for shore protection projects of an emergency nature, in the event of storm, stress of weather or similar act of God. Two percent of the monies annually deposited in the fund shall be allocated and annually appropriated for the purposes of funding the Coastal Protection Technical Assistance Service established pursuant to section 1 of P.L.1993, c.176 (C.18A:64L-1), of which amount up to \$100,000 annually may be utilized for funding coastal engineering research and development to be conducted by Stevens Institute of Technology in response to requests therefor made by State or local governmental entities.

6. This act shall take effect immediately.

Approved July 9, 1993.

CHAPTER 177

AN ACT exempting certain pension or profit-sharing assets and distributions from creditors and amending R.S.25:2-1.

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

1. R.S.25:2-1 is amended to read as follows:

Conveyances of personal property in trust for use of persons making them void as to creditors; exemptions; definitions.

25:2-1. Conveyances of personal property in trust for use of persons making them void as to creditors. a. Except as provided in subsection b. of this section, every deed of gift and every conveyance, transfer and assignment of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against creditors.

b. Notwithstanding the provisions of any other law to the contrary, any property held in a qualifying trust and any distributions from a qualifying trust, regardless of the distribution plan elected

for the qualifying trust, shall be exempt from all claims of creditors and shall be excluded from an estate in bankruptcy, except that:

(1) no exemption shall be allowed for any preferences or fraudulent conveyances made in violation of the "Uniform Fraudulent Transfer Act," R.S.25:2-20 et seq., or any other State or federal law; and

(2) no qualifying trust shall be exempt from the claims under any order for child support or spousal support or of an alternate payee under a qualified domestic relations order. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor of the alternate payee. As used in this paragraph, the terms "alternate payee" and "qualified domestic relations order" have the meanings ascribed to them in section 414(p) of the federal Internal Revenue Code of 1986 (26 U.S.C. §414(p)).

For purposes of this section, a "qualifying trust" means a trust created or qualified and maintained pursuant to federal law, including, but not limited to, section 401, 403, 408, or section 409 of the federal Internal Revenue Code of 1986 (26 U.S.C. §401, 403, 408 or 409).

2. This act shall take effect immediately.

Approved July 9, 1993.

CHAPTER 178

AN ACT concerning the taxation of nonresident taxpayers under the gross income tax, amending N.J.S.54A:3-1, 54A:5-7 and 54A:8-3.1, supplementing Title 54A of the New Jersey Statutes and repealing N.J.S.54A:5-5.

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

1. 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 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).

2. N.J.S.54A:5-7 is amended to read as follows:

Allocations of income of nonresidents.

54A:5-7. Allocations of income of nonresidents. Where a nonresident taxpayer earns, receives or acquires income from sources partly within and partly without this State or engages in a business, trade, profession or occupation partly within and partly without this State, and, as a result thereof or for other reasons that portion of the income from sources within this State cannot readily or accurately be ascertained, the director may by regulation prescribe uniform rules for apportionment or allocation of so much of such taxpayer's income as fairly and equitably represents income, derived from sources within this State and subject to tax under this act.

3. N.J.S.54A:8-3.1 is amended to read as follows:

Persons required to file.

54A:8-3.1 Persons required to file. a. On or before the filing date prescribed in section 1 of this chapter (N.J.S.54A:8-1), an income tax return shall be made and filed by or for an individual, whether filing as unmarried or determining tax pursuant to subsection a. of N.J.S.54A:2-1, an estate or trust, having a gross income in excess of \$3,000.00, and by or for a married couple filing a joint return and

having joint gross income in excess of \$3,000.00 (\$1,500.00 or more in the case of a married person filing separately).

b. If the income tax liability of husband and wife is determined on a separate return for federal income tax purposes, they shall each also file a separate return for New Jersey income tax purposes and their income tax liabilities under this act shall be separate.

c. If the income tax liabilities of husband and wife, both residents, are determined on a joint return for federal income tax purposes, they shall also file a joint return for New Jersey income tax purposes and their tax liabilities under this act shall be joint and several.

d. If either husband or wife is a resident and the other is a nonresident, they shall file separate tax returns under this act on such single or separate forms as may be required by the director in which event their tax liabilities shall be separate unless both elect to determine their joint taxable income as if both were residents, in which event their liabilities shall be joint and several.

e. The return for any deceased individual shall be made and filed by his fiduciary or other person charged with his property.

f. The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

g. Any tax under this act, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the State of New Jersey.

h. If both husband and wife are nonresidents but only one spouse earns, receives or acquires income from sources within this State, they shall file separate forms as may be required by the director and their tax liabilities shall be separate, unless both elect to determine their joint taxable income in accord with N.J.S.54A:5-7 and their liabilities under this act shall be joint and several.

C.54A:2-1.1 Computation of tax due from nonresident.

4. Notwithstanding the provisions of N.J.S.54A:2-1, the tax due for each taxable year from a nonresident taxpayer shall be equal to the tax computed pursuant to N.J.S.54A:2-1 as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the taxpayer's income from sources within this State determined in accordance with the provisions of N.J.S.54A:5-7 and N.J.S.54A:5-8 and the denominator of which is

that taxpayer's gross income for the taxable year as if such taxpayer were a resident.

Repealer.

5. N.J.S.54A:5-5 is repealed.

6. This act shall take effect immediately and apply to taxable years beginning on and after January 1, 1993.

Approved July 9, 1993.

CHAPTER 179

AN ACT concerning membership in the Police and Firemen's Retirement System of New Jersey.

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

1. Notwithstanding the provisions of section 3 of P.L.1944, c.255 (C.43:16A-3) or any other law or regulation to the contrary, a member of the Public Employees' Retirement System who, on the effective date of this act, is an investigator in the office of a county prosecutor, who was over 35 years of age at the time of commencing such employment, who prior to commencing such employment was employed as an investigative agent with the Division of Gaming Enforcement in the Department of Law and Public Safety and who was previously enrolled as a member of the Police and Firemen's Retirement System for a period of at least 13 years while employed as a municipal police officer, may transfer his membership in the Public Employees' Retirement System to the Police and Firemen's Retirement System, provided that he furnishes such evidence of good health at the time of becoming a member as the retirement system shall require and provided that application for the transfer is made within 90 days following the effective date of this act and that the member waives all rights and benefits which would otherwise be provided by the Public Employees' Retirement System.

2. The Public Employees' Retirement System shall remit to the Police and Firemen's Retirement System, within 120 days following the effective date of any transfer pursuant to this act, all accumulated deductions standing to the credit of the transferred employee and, within 180 days following that effective date, the pro rata part of the reserve fund constituting the employer's obligations under the former system applicable to the employee's account. The Police and Firemen's Retirement System shall enter the respective sums so remitted to it to the credit of the employee in the annuity savings fund and to the credit of the employer in the pension accumulation fund. The State shall be liable for the difference between the amount remitted by the Public Employees' Retirement System to the Police and Firemen's Retirement System and the full cost attributable to the increased benefit to be derived from the transfer in accordance with the actuarial method used to determine the cost at the time of the transfer.

3. The transferred member shall have the same obligations, rights and benefits as other members of the Police and Firemen's Retirement System. Deductions from the member's salaries and contributions on the member's behalf shall be made as required by the Police and Firemen's Retirement System and shall be the same as deductions and contributions payable by or for other members of the retirement system. Any credit for public service which had been established in the Public Employees' Retirement System by the transferred member shall be established in the Police and Firemen's Retirement System.

4. This act shall take effect immediately and shall expire one year thereafter.

Approved July 9, 1993.

CHAPTER 180

AN ACT concerning the purchase of certain service credit in the Teachers' Pension and Annuity Fund.

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

1. A former member of the retirement system who, prior to May 1, 1988, retired from the retirement system on a benefit based on less than 25 years of service credited in the retirement system shall be permitted, notwithstanding the person's retirement, to purchase credit in the retirement system for time, not exceeding two months, during the person's active membership in which the person was absent on an official leave without pay, provided that the former member applies to make the purchase not later than the 90th day following the effective date of this act. The purchase shall be made in the same manner and be subject to the same terms and conditions provided for the purchase of previous membership service by N.J.S.18A:66-9, except that the amount required under that section shall be calculated by applying the factor supplied thereunder by the actuary to the highest annual compensation for service in this State during any fiscal year for which credit is purchased. The purchase may be made in a lump sum or in regular installments as provided under N.J.S.18A:66-9, which installments shall be deducted from any retirement allowance payable to the former member. No service credit in the retirement system shall be granted to a former member who shall apply to purchase such credit under this section, and no alteration of the retirement allowance or any other benefit to which the former member may be entitled as a result of the purchase shall take effect, until the first day of the month following the month in which the former member shall complete the purchase.

2. This act shall take effect immediately.

Approved July 9, 1993.

CHAPTER 181

AN ACT concerning retirement benefits for some employees of certain employers participating in the Public Employees' Retirement System.

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

1. An employee of a public agency or instrumentality which elects to provide the benefits authorized under this act who:

a. is at least 50 years of age and has at least 25 years of service credit under the Public Employees' Retirement System (PERS) before the effective date of retirement;

b. files an application to retire on or after August 1, 1993 in the case of an employee of a county public agency or instrumentality, or November 1, 1993 in the case of an employee of any other public agency or instrumentality, and on or before December 1, 1993 in the case of an employee of a county public agency or instrumentality, or March 1, 1994 in the case of an employee of any other public agency or instrumentality; and

c. retires under the retirement system on or after September 1, 1993 in the case of an employee of a county public agency or instrumentality, or December 1, 1993 in the case of an employee of any other public agency or instrumentality, but not later than January 1, 1994 in the case of an employee of a county public agency or instrumentality, or April 1, 1994 in the case of an employee of any other public agency or instrumentality, other than a veteran who retires on a special veteran's retirement, shall receive an additional five years of service credit under PERS. An employee who meets the age and service credit requirements under this section and retires on a special veteran's retirement under PERS shall receive an additional pension under the retirement system in the amount of 5/60 of final year compensation. The additional retirement benefit under this section is applicable only to the full-time employment with the employer which elects to provide the benefits authorized under this act and from which the employee retires to receive the benefit and the compensation for that employment.

2. For an employee of a public agency or instrumentality which provides paid health benefits to retirees pursuant to section 7 of P.L.1964, c.125 (C.52:14-17.38), N.J.S.40A:10-23, or another group health insurance contract or health benefits plan and which elects to provide the benefits authorized under this section who:

a. is at least 60 years of age and has at least 20, but less than 25, years of service credit under the Public Employees' Retirement System (PERS) before the effective date of retirement;

b. files an application to retire on or after August 1, 1993 in the case of an employee of a county public agency or instrumentality, or November 1, 1993 in the case of an employee of any other public agency or instrumentality, and on or before December 1, 1993 in the case of an employee of a county public agency

or instrumentality, or March 1, 1994 in the case of an employee of any other public agency or instrumentality; and

c. retires under the retirement system on or after September 1, 1993 in the case of an employee of a county public agency or instrumentality, or December 1, 1993 in the case of an employee of any other public agency or instrumentality, but not later than January 1, 1994 in the case of an employee of a county public agency or instrumentality, or April 1, 1994 in the case of an employee of any other public agency or instrumentality, the employer shall pay the entire cost for coverage for the retired employee and the employee's dependents, but not including survivors, unless the employer is paying the entire cost for coverage for survivors on the effective date of this act. For employers participating in the New Jersey State Health Benefits Program (NJSHBP), the payment shall be made in the same manner provided for payment by an employer other than the State of premiums or periodic charges for retired employees under section 7 of P.L.1964, c.125 (C.52:14-17.38). For employers not participating in the NJSHBP, the payment shall be made in the same manner provided for payment of premiums after retirement under N.J.S.40A:10-23 or N.J.S.18A:16-19, or the employer's group health insurance contract or health benefits plan, and the level of benefits to retirees under this section shall be the same as the level of benefits provided to other retirees by that employer.

3. A public agency or instrumentality which does not provide paid health benefits to retirees and which elects to provide the benefits authorized under this act shall pay to an employee who meets the qualifications of subsections a. and b. of section 2 of this act an additional pension of \$500 per month in each of the 24 months following the date of retirement.

4. An employee of a public agency or instrumentality which elects to provide the benefits authorized under this act who:

a. is at least 60 years of age and has at least 10, but less than 20, years of service credit under PERS before the effective date of retirement;

b. files an application to retire on or after August 1, 1993 in the case of an employee of a county public agency or instrumentality, or November 1, 1993 in the case of an employee of any other public agency or instrumentality, and on or before December 1, 1993 in the case of an employee of a county public agency

or instrumentality, or March 1, 1994 in the case of an employee of any other public agency or instrumentality; and

c. retires under the retirement system on or after September 1, 1993 in the case of an employee of a county public agency or instrumentality, or December 1, 1993 in the case of an employee of any other public agency or instrumentality, but not later than January 1, 1994 in the case of an employee of a county public agency or instrumentality, or April 1, 1994 in the case of an employee of any other public agency or instrumentality, the employer shall pay an additional pension of \$500 per month in each of the 24 months following the date of retirement.

5. An employer may elect to provide the benefits under this act by adoption of a resolution by its governing body and filing a certified copy of the resolution with the Director of the Division of Pensions and Benefits on or before July 1, 1993 in the case of a county public agency or instrumentality, or September 1, 1993 in the case of any other public agency or instrumentality. The employer shall submit to the director any information necessary to provide the benefits or to determine the liability for them.

6. The actuary for PERS shall determine the liability of the retirement system for the additional service credit or pensions provided under this act and for the early retirement of employees in accordance with the tables of actuarial assumptions adopted by the board of trustees of the retirement system. This liability shall be added to the unfunded accrued liability of the employer under the retirement system and shall be paid in the same manner and over the remaining time period provided for the unfunded accrued liability under section 24 of P.L.1954, c.84 (C.43:15A-24). The employer shall pay the cost of the actuarial work to determine the additional liability of the retirement system for the benefits under this act which shall be included in the initial contribution required from the employer.

7. An employee who receives a benefit under this act shall forfeit all tenure rights.

8. Where the needs of a public agency or instrumentality require the services of an employee who elects to retire and receive a benefit under this act, the employer, with the approval of the governing body of that agency or instrumentality and with the consent of the employee, may delay the effective retirement date of the

employee until the first day of any calendar month after January 1, 1994 in the case of an employee of a county public agency or instrumentality, or April 1, 1994 in the case of an employee of any other public agency or instrumentality, but not later than January 1, 1995 in the case of an employee of a county public agency or instrumentality, or April 1, 1995 in the case of an employee of any other public agency or instrumentality. A delay in the effective retirement date of an employee shall not extend the dates set forth in sections 1 through 4 to qualify for benefits under this act.

For a member of PERS whose effective retirement date is delayed under this section and who dies before the retirement becomes effective, the retirement shall be effective as of the first day of the month after the date of death of the member if the member's beneficiary requests in writing to the board of trustees of the retirement system that the retirement be effective under the Option settlement selected by the member, or under Option 3 if the member did not select an Option.

9. An employee of a public agency or instrumentality retiring with a benefit under this act who has not repaid the full amount of a loan from the retirement system by the effective date of retirement, may repay the loan through deductions from the member's retirement benefit payments in the same monthly amount which was deducted from the member's compensation immediately preceding retirement until the balance of the amount borrowed together with interest at the statutory rate is repaid. If the retiree dies before the outstanding balance of the loan and interest is repaid, the remaining amount shall be repaid as provided in section 2 of P.L.1981, c.55 (C.43:15A-34.1).

10. An employee of a public agency or instrumentality purchasing service credit on or after the effective date of this act to qualify for a benefit under this act may purchase a portion of the credit which the employee is eligible to purchase.

11. For the purposes of this act:

a. "Employee of a public agency or instrumentality" means a full-time employee of an authority, board, commission, corporation, or other agency or instrumentality which is a participating employer in PERS, including an agency or instrumentality authorized to participate in PERS under section 73 of P.L.1954, c.84 (C.43:15A-73) and P.L.1990, c.25 (C.43:15A-73.2 et al.) and a public agency or organization as defined in section 71 of

P.L.1954, c.84 (C.43:15A-71) but excluding Rutgers, The State University, the New Jersey Institute of Technology, the University of Medicine and Dentistry of New Jersey, a State or a county college, a board of education, a county and a municipality, who is eligible to participate in the employer's health benefits plan.

b. "Final year compensation" means the compensation received in the last 12 months immediately preceding retirement in which compensation is received and upon which contributions are made by the employee to the retirement system.

12. Prior to July 1, 1993 in the case of a county public agency or instrumentality, or September 1, 1993 in the case of any other public agency or instrumentality, each public agency or instrumentality covered by the provisions of this act shall meet and consult with the representatives of the bargaining unit or units representing the employees who would be eligible for benefits under this act.

13. This act shall take effect immediately.

Approved July 9, 1993.

CHAPTER 182

AN ACT concerning the funding of pension adjustment and health care benefits for retirees in the Public Employees' Retirement System and amending P.L.1990, c.6.

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

1. Section 2 of P.L.1990, c.6 (C.43:15A-24.1) is amended to read as follows:

C.43:15A-24.1 Payment of pension adjustment benefits, health benefits.

2. Pension adjustment benefits for members and beneficiaries of the Public Employees' Retirement System provided by the "Pension Adjustment Act," P.L.1958, c.143 (C.43:3B-1 et seq.) and premiums or periodic charges which the State is required to pay for benefits provided to retired State employees and their dependents under the "New Jersey State Health Benefits Program Act," P.L.1961, c.49 (C.52:14-17.25 et seq.), shall be paid by the retirement system and shall be funded as employer obligations as

provided in this section. Health care benefits for State employees and their dependents shall be funded and paid through a separate fund or trust of the retirement system in accordance with the requirements of subsection (h) of section 401 of the federal Internal Revenue Code (26 U.S.C. §401) or other fund or trust, established under the jurisdiction of the board of trustees, which shall receive contributions only to the extent that contributions cannot otherwise be made to a section 401 (h) trust due to the requirements of the federal law. Any premium payments for retired participants shall first be a charge upon such other fund or trust and only secondarily on the assets set aside under the section 401(h) trust. The pension adjustment and health care benefits for qualified retirees shall be funded as employer obligations by the same method provided by law for the funding of employer obligations for the basic retirement benefits provided by the retirement system. Normal and accrued liability contribution rates for these benefits for active employees shall be determined for the 1990 valuation year and shall be phased in so that the level of recognition of the full normal and accrued liability contribution rates for the State shall be 25.30% for valuation year 1990, 25.30% for valuation year 1991, and 34.50% for valuation year 1992, and for the other employers shall be 82.50% for valuation year 1990, 93% for valuation year 1991, and 93% for valuation year 1992, and the level of recognition shall be increased by 6% for each valuation year thereafter until the full normal and accrued liability contributions rates are fully recognized. The board of trustees shall determine the assumed percentage rate of increase applied to the cost of providing paid health benefits for retirees. The liability for pension adjustment benefits and for premiums or periodic charges for health care benefits for retired State employees and their dependents shall be included as a liability of the retirement system as of April 1, 1988.

2. This act shall take effect immediately.

Approved July 9, 1993.

CHAPTER 183

AN ACT to validate certain proceedings for the issuance of bonds of school districts and any bonds or other obligations issued or to be issued pursuant to such proceedings.

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

1. All proceedings heretofore had or taken by any school district or at any school election for the authorization or issuance of bonds of the school district and any bonds or other obligations of the school district issued or to be issued in pursuance of any proposal adopted by the legal voters at such meeting or election, are hereby ratified, validated and confirmed, notwithstanding that the supplemental debt statement required by N.J.S.18A:24-16 was not prepared and filed in accordance with the provisions of N.J.S.18A:24-17; provided that a supplemental debt statement heretofore has been prepared and filed in the place or places required by N.J.S.18A:24-17; and notwithstanding that the required number of election workers were not present at each polling place as required by N.J.S.18A:14-16; provided that no action, suit, or other proceeding of any nature to contest the validity of such proceedings has heretofore been instituted prior to the date upon which this act shall take effect and within the time fixed therefor by or pursuant to law or rule of court, or when such time has not heretofore expired, if instituted within 15 days after the effective date of this act.

2. This act shall take effect immediately.

Approved July 9, 1993.

CHAPTER 184

AN ACT establishing "Animal Welfare" license plates, supplementing chapter 3 of Title 39 of the Revised Statutes and amending P.L.1983, c.172.

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

C.39:3-27.55 Issuance of animal welfare license plates.

1. a. Upon proper application, the Director of the Division of Motor Vehicles may issue animal welfare license plates for a motor vehicle owned or leased and registered in the State. In addition to

the registration number and other markings or identification otherwise prescribed by law, an animal welfare license plate shall display words or a slogan and an emblem indicating support for, or interest in, animal welfare. The words or slogan and emblem shall be selected by the director. Issuance of animal welfare license plates in accordance with this subsection shall be subject to the limitations of section 3 of P.L.1959, c.56 (C.39:3-33.5) and other applicable requirements of chapter 3 of Title 39 of the Revised Statutes, except as hereinafter specifically provided.

b. Application for issuance of an animal welfare license plate shall be made to the director on forms and in a manner as may be prescribed by the director. In order to be deemed complete, an application shall be accompanied by a fee of \$50, payable to the Division of Motor Vehicles, which shall be in addition to the fee otherwise prescribed by law for the registration of motor vehicles. The annual renewal fee for the registration certificate of a motor vehicle for which an animal welfare license plate has been issued shall include, in each year subsequent to the year of issuance, an animal welfare license plate fee in the amount of \$10, which shall be in addition to the fee for the renewal of the registration certificate.

C.39:3-27.56 Use of fees.

2. Moneys from the application and renewal fees collected by the Division of Motor Vehicles for animal welfare license plates shall be deposited in the Animal Population Control Fund established in the Department of Health pursuant to P.L.1983, c.172 (C.4:19A-1 et al.), and used for the purposes of that act, except that an amount not to exceed \$100,000 of the fees first collected from the issuance of these plates shall be allocated to the Division of Motor Vehicles to defray the administrative costs necessary to implement the provisions of this act.

C.39:3-27.57 Notification of eligible motorists.

3. The director shall notify eligible motorists of the opportunity to obtain animal welfare license plates by including a notice with all motor vehicle registration renewals, and by posting appropriate posters or signs in all division facilities and offices. The notices, posters and signs shall be designed by the Commissioner of Health, in consultation with advocacy groups having an interest in animal welfare and animal population control, subject to the approval of the director. The Department of Health shall supply the division with the notices, posters, and signs to be circulated or posted by the division.

C.39:3-27.58 Interagency memorandum of agreement.

4. The Commissioner of Health and the director shall enter into an interagency memorandum of agreement setting forth the procedures to be followed by the Department of Health and the Division of Motor Vehicles in carrying out their respective responsibilities under this act.

5. Section 6 of P.L.1983, c.172 (C.4:19A-5) is amended to read as follows:

C.4:19A-5 Animal Population Control Fund.

6. a. The commissioner may solicit and accept funds from any public or private source to help carry out the provisions of P.L.1983, c.172 (C.4:19A-1 et al.).

b. All fees collected pursuant to section 1 of P.L.1983, c.172 (C.4:19-15.3b) and sections 3 and 4 of P.L.1983, c.172 (C.43:19A-2 and C.4:19A-3), all moneys from the application and renewal fees collected for animal welfare license plates issued pursuant to P.L.1993, c.184 (C.39:3-27.55 et al.), and all moneys received pursuant to subsection a. of this section, shall be placed in a special fund to be known as the "Animal Population Control Fund," which shall be separate from the General State Fund. All moneys in the "Animal Population Control Fund" shall be used by the commissioner exclusively for the implementation and promotion of the program and for the costs associated with the administration of P.L.1983, c.172 (C.4:19A-1 et al.), except as provided in subsection c. of this section.

c. Moneys deposited into the fund generated by the collection of application and renewal fees for animal welfare license plates issued pursuant to P.L.1993, c.184 (C.39:3-27.55 et al.) shall be utilized by the commissioner to reimburse the Division of Motor Vehicles for all costs incurred by the division, as certified by the director, of producing, issuing, renewing, and publicizing the availability of animal welfare license plates.

d. The director shall annually certify to the commissioner the average cost per license plate incurred in the immediately preceding year by the division in producing, issuing, renewing, and publicizing the availability of animal welfare license plates. The annual certification of the average cost per license plate shall be approved by the Joint Budget Oversight Committee, or its successor.

e. In the event that the average cost per license plate as certified by the director and approved by the Joint Budget Oversight

Committee, or its successor, is greater than the \$50 application fee established in subsection b. of section 1 of P.L.1993, c.184 (C.39:3-27.55) in two consecutive fiscal years, the director may discontinue the issuance of animal welfare license plates.

6. This act shall take effect on the 180th day after enactment.

Approved July 10, 1993.

CHAPTER 185

AN ACT concerning the practice of podiatry and amending R.S.45:5-7.

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

1. R.S.45:5-7 is amended to read as follows:

Examinations; licensing; license; definitions; display of license.

45:5-7. All examinations shall be written in the English language, but the board, in its discretion, may use supplementary oral or practical examinations, either of the whole class or of individuals. The examinations shall be in all subjects taught and practiced in the legally incorporated schools or colleges of podiatry, in good standing in the opinion of the board, which confer the degree of doctor of surgical chiropody or other doctorate degree in podiatry. Said application and examination papers shall be deposited in the files of the said board for at least five years, and they shall be prima facie evidence of all matters therein contained. All licenses shall be signed by the president and secretary of the board and shall be attested by the seal thereof.

If the examination is satisfactory, the board shall issue a license entitling the applicant to practice podiatry in this State.

"Podiatry" or "practice of podiatry" is defined to be the diagnosis or treatment of or the holding out of a right or ability to diagnose or treat any ailment of the human foot, including local manifestations of systemic diseases as they appear on the lower leg or foot but not treatment of systemic diseases of any other part of the body, or the holding out of a right or ability to treat the same by any one or more of the following means: local medical, mechani-

cal, surgical, manipulative and physio-therapeutic, including the application of any of the aforementioned means to the lower leg and ankle for the treatment of a foot ailment. Such means shall not be construed to include the amputation of the leg or foot. The term "local medical" hereinbefore mentioned shall be construed to mean the prescription or use of a therapeutic agent or remedy where the action or reaction is intended for a localized area or part. A podiatrist is a physician within the scope of this chapter, and may be referred to as a podiatric physician.

Every person practicing podiatry under this act shall at all times conspicuously display in his place of practice his license and yearly registration to practice. It shall be unlawful to practice podiatry in this State without so displaying such license and registration. Any applicant for a license to practice podiatry upon proving that he has been examined and licensed by the examining and licensing board of another state, territory of the United States, or the District of Columbia, may in the discretion of the board be granted a license to practice podiatry without further examination upon payment to the board of a license fee of \$100.00; provided, such applicant shall furnish proof that he can fulfill the requirements demanded in the other sections of this chapter relating to applicants for admission by examinations; provided further, that the laws of such state, territory or the District of Columbia accord equal reciprocal rights to a licensed podiatrist of this State, who desires to practice his profession in such state, territory or the District of Columbia; provided further, that said applicant has been in lawful and ethical practice of podiatry in the state, territory or District of Columbia from which he applies for five full consecutive years next prior to filing his application; and provided, further, that said applicant shall, within six months after the issuance of his license hereunder, remove to this State, establish his permanent and only legal residence and cease to operate his practice in the state from which he applies and not use such license for part-time practice in this State. An affidavit setting forth his intention to comply with the requirements of this proviso must be filed with the application for license. In any such application for a license without examination, all reciprocal questions of academic requirements of other states, territories or the District of Columbia shall be determined by the board. The board shall consider each application for such license on its individual merits and may, in its discretion and without establishing a precedent, waive the require-

ments for internship in lieu of 10 or more years of active and continuous ethical practice outside of this State.

The board may issue to any licensed podiatrist of this State, known to it to be of good moral character and who has conducted an ethical practice in this State, and who desires to remove his residence and practice to another state, a certificate or certification authenticated with its seal, which shall attest such information as may be necessary for competent boards of other states to determine reciprocity qualifications, upon payment of a fee of \$10.00.

The board may, in its discretion, accept in lieu of its own examination, either in whole or in part, the certificate of the National Board of Podiatry Examiners; and provided further, that the applicant satisfies in all other respects the requirements for licensure by examination. Such application to the board shall be accompanied by an application fee of \$100.00 plus \$10.00 for verification. In the event an oral or practical examination or both is given under this provision, an additional fee of \$25.00 may be required for examiner compensation.

The board, in its discretion, may grant a license without further examination to any person whose previous license has been revoked under R.S.45:5-8 and upon payment to the board of a license fee of \$100.00.

2. This act shall take effect immediately.

Approved July 16, 1993.

CHAPTER 186

AN ACT concerning certain claims for personal injury protection benefits and amending P.L.1972, c.70.

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

1. Section 13 of P.L.1972, c.70 (C.39:6A-13) is amended to read as follows:

C.39:6A-13 Discovery of facts as to personal injury protection coverage.

13. Discovery of facts as to personal injury protection coverage. The following apply to personal injury protection coverage benefits:

a. Every employer shall, if a request is made by an insurer or the Unsatisfied Claim and Judgment Fund providing personal injury protection benefits under this act against whom a claim has been made, furnish forthwith, in a form approved by the Commissioner of Insurance, a signed statement of the lost earnings since the date of the bodily injury and for a reasonable period before the injury, of the person upon whose injury the claim is based.

b. Every physician, hospital, clinic or other medical institution providing, before and after the bodily injury upon which a claim for personal injury protection benefits is based, any products, services or accommodations in relation to such bodily injury or any other injury, or in relation to a condition claimed to be connected with such bodily injury or any other injury, shall, if requested to do so by the insurer or the Unsatisfied Claim and Judgment Fund against whom the claim has been made, furnish forthwith a written report of the history, condition, treatment, dates and costs of such treatment of the injured person, and produce forthwith and permit the inspection and copying of his or its records regarding such history, condition, treatment dates and costs of treatment. The person requesting such records shall pay all reasonable costs connected therewith.

c. The injured person shall be furnished upon demand a copy of all information obtained by the insurer or the Unsatisfied Claim and Judgment Fund under the provisions of this section, and shall pay a reasonable charge, if required by the insurer and the Unsatisfied Claim and Judgment Fund.

d. Whenever the mental or physical condition of an injured person covered by personal injury protection is material to any claim that has been or may be made for past or future personal injury protection benefits, such person shall, upon request of an insurer or the Unsatisfied Claim and Judgment Fund submit to mental or physical examination by a physician or physicians, or chiropractor or chiropractors. Only a licensed chiropractor may determine the clinical need for further chiropractic treatment by performing a chiropractic examination and this determination shall not depend solely upon a review of the treating chiropractor patient records in cases of denial of benefits. The costs of any examinations requested by an insurer or the Unsatisfied Claim and Judgment Fund shall be borne entirely by whomever makes such request. Such examination shall be conducted within the municipality of residence of the injured person. If there is no qualified physician or chiropractor to conduct the examination within the municipality of residence of the injured person, then such examination shall be conducted in an area of the closest proximity to

the injured person's residence. Personal protection insurers are authorized to include reasonable provisions in personal injury protection coverage policies for mental and physical examinations of those claiming personal injury protection coverage benefits.

e. If requested by the person examined, a party causing an examination to be made, shall deliver to him a copy of every written report concerning the examination rendered by an examining physician or chiropractor, at least one of which reports must set out his findings and conclusions in detail. After such request and delivery, the party causing the examination to be made is entitled upon request to receive from the person examined every written report available to him, or his representative, concerning any examination, previously or thereafter made of the same mental or physical condition.

f. The injured person, upon reasonable request by the insurer or the Unsatisfied Claim and Judgment Fund shall sign all forms, authorizations, releases for information, approved by the Commissioner of Insurance, which may be necessary to the discovery of the above facts, in order to reasonably prove the injured person's losses.

g. In the event of any dispute regarding an insurer's or the Unsatisfied Claim and Judgment Fund's or an injured person's right as to the discovery of facts about the injured person's earnings or about his history, condition, treatment, dates and costs of such treatment, or the submission of such injured person to a mental or physical examination, the insurer, Unsatisfied Claim and Judgment Fund or the injured person may petition a court of competent jurisdiction for an order resolving the dispute and protecting the rights of all parties. The order may be entered on motion for good cause shown giving notice to all persons having an interest therein. Such court may protect against annoyance, embarrassment or oppression and may as justice requires, enter an order compelling or refusing discovery, or specifying conditions of such discovery; the court may further order the payment of costs and expenses of the proceeding, as justice requires.

2. This act shall take effect immediately.

Approved July 16, 1993.

CHAPTER 187

AN ACT concerning the employment of certain law enforcement officers by a county or municipality and of certain firefighters by a municipality and amending P.L.1991, c.299 and supplementing chapter 14 of Title 40A of the New Jersey Statutes.

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

1. Section 1 of P.L.1991, c.299 (C.40A:14-180) is amended to read as follows:

C.40A:14-180 Appointments to county or municipal police force of certain law enforcement officers.

1. a. The provisions of any other law to the contrary notwithstanding, the appointing authority of a county or municipality which, pursuant to N.J.S.40A:14-106, in the case of a county, or N.J.S.40A:14-118, in the case of a municipality, has established and maintains a police force may appoint as a member or officer of the county or municipal police department any person who:

(1) was serving as a law enforcement officer in good standing in any State, county or municipal law enforcement department or agency;

(2) satisfactorily completed a working test period in a State law enforcement title or in a law enforcement title in a county or municipality which has adopted Title 11A, Civil Service, of the New Jersey Statutes or satisfactorily completed a comparable, documented probationary period in a law enforcement title in a county or municipality which has not adopted Title 11A, Civil Service; and

(3) was, for reasons of economy, terminated as a law enforcement officer within 36 months prior to the appointment.

b. A county or municipality may employ such a person notwithstanding that:

(1) Title 11A, Civil Service, of the New Jersey Statutes is operative in that county or municipality;

(2) the county or municipality has available to it an eligible or regular reemployment list of persons eligible for such appointments; and

(3) the appointed person is not on any eligible list. A county or municipality which has adopted Title 11A, Civil Service, may not employ such a person if a special reemployment list is in existence for the law enforcement title to be filled.

c. If a county determines to appoint a person pursuant to the provisions of this act, it shall give first priority in making such

appointments to residents of the county. A municipality making such an appointment shall give first priority to residents of the municipality and second priority to residents of the county not residing in the municipality.

d. The seniority, seniority-related privileges and rank a law enforcement officer possessed with the employer who terminated the officer's employment for reasons of economy shall not be transferable to a new position when the officer is appointed to a law enforcement position pursuant to the provisions of this section.

C.40A:14-9.9 Appointments to municipal fire department, force of certain firefighters.

2. a. The provisions of any other law to the contrary notwithstanding, the appointing authority of a municipality which, pursuant to N.J.S.40A:14-7, has established and maintains a paid or part-paid fire department and force may appoint as a member or officer of the municipal fire department and force any person who:

(1) was serving as an officer or member in good standing in any paid or part-paid municipal fire department and force;

(2) satisfactorily completed a working test period in a firefighter title in a municipality which has adopted Title 11A, Civil Service, of the New Jersey Statutes or satisfactorily completed a comparable, documented probationary period in a firefighter title in a municipality which has not adopted Title 11A, Civil Service; and

(3) was, for reasons of economy, terminated as a firefighter within 36 months prior to the appointment.

b. A municipality may employ such a person notwithstanding that:

(1) Title 11A, Civil Service, of the New Jersey Statutes is operative in that municipality;

(2) the municipality has available to it an eligible or regular reemployment list of persons eligible for such appointments; and

(3) the appointed person is not on any eligible list. A municipality which has adopted Title 11A, Civil Service, may not employ such a person if a special reemployment list is in existence for the firefighter title to be filled.

c. If a municipality determines to appoint a person pursuant to the provisions of this act, it shall give first priority in making such appointments to residents of the municipality and second priority to residents of the county not residing in the municipality.

d. The seniority, seniority-related privileges and rank a firefighter possessed with the employer who terminated the firefighter's employment for reasons of economy shall not be

transferable to a new position when the firefighter is appointed to a firefighter position pursuant to the provisions of this section.

3. This act shall take effect immediately.

Approved July 18, 1993.

CHAPTER 188

AN ACT concerning a portion of filing fees for divorce to fund programs for displaced homemakers, amending N.J.S.22A:2-12 and supplementing P.L.1979, c.125 (C.52: 27D-43.19 et seq.).

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

1. N.J.S.22A:2-12 is amended to read as follows:

Payment of fees in Chancery Division of Superior Court upon filing of first paper.

22A:2-12. Upon the filing of the first paper in any action or proceeding in the Chancery Division of the Superior Court, there shall be paid to the clerk of the court, for the use of the State, the following fees, which, except as hereinafter provided, shall constitute the entire fees to be collected by the clerk for the use of the State, down to the final disposition of the cause:

Receivership and partition, \$135.00.

All other actions and proceedings except in probate cases and actions and proceedings for divorce, \$135.00.

Actions and proceedings for divorce, \$160.00, \$25.00 of which shall be forwarded by the Clerk of the Superior Court as provided in section 2 of P.L.1993, c.188 (C.52:27D-43.24a).

Any person filing a motion in any action or proceeding shall pay to the clerk \$15.00.

C.52:27D-43.24a Forwarding of filing fee.

2. The Clerk of the Superior Court shall forward \$25.00 of the \$160.00 filing fee for divorce provided for in N.J.S.22A:2-12 on a quarterly basis to the Department of Community Affairs.

C.52:27D-43.24b Establishment of trust fund.

3. The Department of Community Affairs shall establish a trust fund for the deposit of the fees collected pursuant to section 2 of this amendatory and supplementary act. The moneys from the trust

fund shall be used for the specific purpose of providing grants-in-aid to programs for displaced homemakers as identified by the Division on Women in the Department of Community Affairs pursuant to section 3 of P.L.1979, c.125 (C.52:27D-43.20).

C.52:27D-43.24c Rules, regulations.

4. The Commissioner of the Department of Community Affairs in accordance with 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 including rules and regulations establishing eligibility requirements for programs for displaced homemakers to receive the grants-in-aid.

5. This act shall take effect on the 60th day after enactment.

Approved July 19, 1993.

CHAPTER 189

AN ACT concerning motor vehicle franchises, amending P.L.1971, c.356, P.L.1982, c.156 and P.L.1985, c.361, and supplementing P.L.1977, c.84 (C.56:10-13 et seq.).

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

1. Section 4 of P.L.1971, c.356 (C.56:10-4) is amended to read as follows:

C.56:10-4 Application of act.

4. This act applies only:

a. to a franchise (1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of New Jersey, (2) where gross sales of products or services between the franchisor and franchisee covered by such franchise shall have exceeded \$35,000.00 for the 12 months next preceding the institution of suit pursuant to this act, and (3) where more than 20% of the franchisee's gross sales are intended to be or are derived from such franchise; or

b. to a franchise for the sale of new motor vehicles as defined in R.S.39:10-2, the performance of which contemplates or

requires the franchisee to establish or maintain a place of business within the State of New Jersey.

2. Section 8 of P.L.1982, c.156 (C.56:10-23) is amended to read as follows:

C.56:10-23 Factors for consideration.

8. a. In determining whether the grant, relocation, reopening or reactivation of a franchise or establishment, relocation, reopening or reactivation of a business will be injurious to existing franchisees or to the public interest, the committee may consider, but shall not be limited to considering the following:

(1) The effect that the proposed franchise or business would have on the provision of stable, adequate and reliable sales and service to purchasers of vehicles in the same line make in the relevant market area;

(2) The effect that the proposed franchise or business would have on the stability of existing franchisees in the same line make in the relevant market area;

(3) Whether the existing franchisees in the same line make in the relevant market area are providing adequate and convenient consumer service for motor vehicles of the line make in the relevant market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts and qualified service personnel;

(4) The effect on a relocating dealer of a denial of its relocation into the relevant market area.

b. In determining whether the grant, relocation, reopening or reactivation of a franchise or establishment, relocation, reopening or reactivation of a business will be injurious to existing franchisees or to the public interest, it shall be presumed that the proposed grant, relocation, reopening or reactivation of the franchise or establishment, relocation, reopening or reactivation of the business will be injurious to existing franchisees or to the public interest if:

(1) for the 24 month period prior to notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19), the average sales penetration of the franchisees given notice pursuant to section 4 of P.L.1982, c.156 (C.56:10-19) is at least equal to the average sales penetration of all franchisees in the same line make in the zone, district, region or other geographic designation used by the motor vehicle franchisor into which the proposed franchise or business will be assigned;

(2) the proposed franchise or business is likely to cause not less than a 25% reduction in new vehicle sales or not less than a 25% reduction in gross income for the protesting franchisee;

(3) the proposed franchise or business will not operate a full service franchise or business at the proposed location; or

(4) an owner or operator of the proposed franchise or business has engaged in materially unfair or deceptive business practices with respect to a motor vehicle franchise or business.

c. The presumption in subsection b. of this section shall not apply to the grant, reopening or reactivation of a franchise or to the establishment, reopening or reactivation of a business if the proposed franchisee is a minority or a woman. For the purposes of this subsection, "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.

3. Section 5 of P.L.1982, c.156 (C.56:10-20) is amended to read as follows:

C.56:10-20 Rights of franchisor.

5. The provisions of sections 3 and 4 of P.L.1982, c.156 (C.56:10-18 and 56:10-19) notwithstanding, a motor vehicle franchisor may:

a. Permit an existing franchisee to relocate his franchise within two miles of the franchisee's existing franchise location, except that a franchise may not be relocated pursuant to this subsection unless at least five years have elapsed since any previous relocation pursuant to this subsection;

b. Reopen or reactivate a franchise or business which has not been in operation for a period of two years or less at a site within two miles of the prior site; or

c. Permit the purchaser of a controlling interest in the shares or substantially all of the operating assets of an existing franchise to relocate the place of business of the franchise within two miles

of the previously approved franchise location within 180 days of the date of purchase.

4. Section 3 of P.L.1985, c.361 (C.56:10-28) is amended to read as follows:

C.56:10-28 Prohibition of ownership by franchisor.

3. It shall be a violation of this act for a motor vehicle franchisor, directly or indirectly, through any officer, agent, employee, broker or any shareholder of the franchisor, except a shareholder of 1% or less of the outstanding shares of any class of securities of a franchisor which is a publicly traded corporation, or other person, to own or operate a place of business as a motor vehicle franchisee, except that this section shall not prohibit the ownership or operation of a place of business by a motor vehicle franchisor for a period, not to exceed 24 consecutive months, during the transition from one motor vehicle franchisee to another; or the investment in a motor vehicle franchisee by a motor vehicle franchisor if the investment is for the sole purpose of enabling a partner or shareholder in that motor vehicle franchisee to acquire an interest in that motor vehicle franchisee and that partner or shareholder is not otherwise employed by or associated with the motor vehicle franchisor and would not otherwise have the requisite capital investment funds to invest in the motor vehicle franchisee, and has the right to purchase the entire equity interest of the motor vehicle franchisor in the motor vehicle franchisee within a reasonable period of time not to exceed 10 years.

C.56:10-13.6 Violations by franchisor.

5. It shall be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor vehicle franchisor to exercise a right of first refusal or other right to acquire a motor vehicle franchise from a motor vehicle franchisee as a means to influence the consideration or other terms offered by a person in connection with the acquisition of the motor vehicle franchise or to influence a person to refrain from entering into, or to withdraw from, negotiations for the acquisition of the motor vehicle franchise.

C.56:10-13.7 Exceptions to violations by franchisor, "acquiring transferee" defined.

6. It shall be a violation of the "Franchise Practices Act," P.L.1971, c.356 (C.56:10-1 et seq.), for a motor vehicle franchisor to exercise a right of first refusal or other right to acquire a motor vehicle franchise from a motor vehicle franchisee unless the motor vehicle franchisor:

a. at the election of the motor vehicle franchisee, assumes the lease for or acquires the real property on which the motor vehicle franchise is conducted on the same terms as those on which the real property or lease was to be sold or transferred to the acquiring transferee in connection with the sale of the motor vehicle franchise, unless otherwise agreed to by the motor vehicle franchisee and motor vehicle franchisor; and

b. reimburses the acquiring transferee of the motor vehicle franchise for the reasonable expenses paid or incurred by him in evaluating and investigating the motor vehicle franchise and negotiating and pursuing the acquisition of the motor vehicle franchise prior to the motor vehicle franchisor's exercise of the right of first refusal or other right to acquire the motor vehicle franchise. For purposes of this subsection, expenses to evaluate and investigate the motor vehicle franchise means, in addition to any other expenses associated with the evaluation and investigation of the motor vehicle franchise, legal and accounting expenses, and expenses associated with the evaluation and investigation of any real property on which the motor vehicle franchise is conducted, including, but not limited to, expenses associated with title examinations, environmental assessments and other expenses directly related to the acquisition or lease of such real property by the acquiring transferee. Upon reimbursement, any title reports, or other reports or studies received by the acquiring transferee as a result of the evaluation or investigation of the motor vehicle franchise or the real property on which the motor vehicle franchise is conducted shall be provided to the motor vehicle franchisor. The acquiring transferee shall submit an itemized list of the expenses to be reimbursed along with supporting documents, if any, to the motor vehicle franchisor no later than 30 days after receipt of a written request for same from the motor vehicle franchisor. The motor vehicle franchisor shall make payment within 30 days of receipt of the itemized list.

c. For purposes of this section, "acquiring transferee" means the person to whom the motor vehicle franchise would have been transferred had the right of first refusal or other right to acquire the motor vehicle franchise not been exercised by the motor vehicle franchisor.

7. This act shall take effect immediately.

Approved July 19, 1993.

CHAPTER 190

AN ACT concerning the protection of the coastal area, providing for the review of certain developments therein, amending and supplementing P.L.1973, c.185, amending R.S.12:5-3, P.L.1975, c.232, P.L.1985, c.398 and P.L.1986, c.145, amending the title of P.L.1973, c.185, and repealing parts of the statutory law.

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

Title amended.

1. The title of P.L.1973, c.185 (C.13:19-1 et seq.) is amended to read as follows:

An act concerning the review of certain developments located in the coastal area.

2. Section 2 of P.L.1973, c.185 (C.13:19-2) is amended to read as follows:

C.13:19-2 Findings, declarations.

2. The Legislature finds and declares that New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area, that certain portions of the coastal area are now suffering serious adverse environmental effects resulting from existing development activity impacts that would preclude or tend to preclude those multiple uses which support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all people of the State; and that, therefore, it is in the interest of the people of the State that all of the coastal area should be dedicated to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area.

It is further declared that the coastal area and the State will suffer continuing and ever-accelerating serious adverse economic, social and aesthetic effects unless the State assists, in accordance

with the provisions of this act, in the assessment of impacts, stemming from the future location and kinds of developments within the coastal area, on the delicately balanced environment of that area.

The Legislature further recognizes the legitimate economic aspirations of the inhabitants of the coastal area and wishes to encourage the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides adequate environmental safeguards for the construction of any developments in the coastal area.

3. Section 3 of P.L.1973, c.185 (C.13:19-3) is amended to read as follows:

C.13:19-3 Definitions.

3. As used in this act:

“Beach” means a gently sloping unvegetated area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, and that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river waters;

“Commercial development” means a development designed, constructed or intended to accommodate commercial or office uses. “Commercial development” shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, financial, or other commercial services;

“Commissioner” means the Commissioner of Environmental Protection and Energy;

“Department” means the Department of Environmental Protection and Energy;

“Development” means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches or dunes, and shall

include residential development, commercial development, industrial development, and public development;

“Dune” means a wind- or wave-deposited or man-made formation of vegetated sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland slope of the dune. Dune includes the fore-dune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist;

“Dwelling unit” means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L.1962, c.73 (C.12:7-34.37);

“Governmental agency” means the Government of the United States, the State of New Jersey, or any other state, or a political subdivision, authority, agency or instrumentality thereof, and shall include any interstate agency or authority;

“Industrial development” means a development that involves a manufacturing or industrial process, and shall include, but need not be limited to, electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes utilizing mineral products;

“Person” means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency;

“Public development” means a solid waste facility, including an incinerator and landfill, wastewater treatment plant, public highway, airport, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines;

“Public highway” means a public highway as defined in section 3 of P.L.1984, c.73 (C.27:1B-3);

“Reconstruction” means the repair or replacement of a building, structure, or other part of a development;

“Residential development” means a development that provides one or more dwelling units.

4. Section 4 of P.L.1973, c.185 (C.13:19-4) is amended to read as follows:

C.13:19-4 "Coastal area" defined.

4. The "coastal area" shall consist of all that certain area lying between the line as hereinafter described and the line formed by the State's seaward (Raritan Bay and Atlantic Ocean) territorial jurisdiction on the east thereof, the State's bayward (Delaware Bay) territorial jurisdiction on the south and southwest thereof, and the State's riverward (Delaware River) territorial jurisdiction on the west thereto. Beginning at the confluence of Cheesequake Creek with the Raritan Bay; thence southwesterly along the center line of Cheesequake Creek to its intersection with the Garden State Parkway; thence southeasterly along the Garden State Parkway to Exit 117 at State Highway 36; thence northeasterly along State Highway 36 to the intersection of Middle Road (County 516); thence easterly along Middle Road to the intersection of Palmer Avenue (County 7); thence northeasterly on Main Street to the intersection of State Highway 36; thence easterly on State Highway 36 to the intersection of Navesink Avenue; thence southerly on Navesink Avenue to the intersection of Monmouth Avenue at Navesink; thence westerly on Monmouth Avenue to its intersection with Browns Dock Road; thence southerly on Browns Dock Road to its intersection with Cooper Road; thence southwesterly on Cooper Road to the intersection of State Highway 35; thence southerly on State Highway 35 to its intersection with State Highway 71; thence southeasterly on State Highway 71 to its crossing of the Central Railroad of New Jersey tracks, now the Consolidated Rail Corporation (Conrail)/New Jersey Transit Corporation (NJ Transit); thence southerly along the Central Railroad of New Jersey tracks (now Conrail/NJ Transit) to its intersection of 6th Avenue (County 2); thence westerly on 6th Avenue (County 2) to the intersection of State Highway 33; thence westerly along State Highway 33 to the crossing of State Highway 18; thence southerly on State Highway 18 to its intersection of Marconi Road; thence southeasterly on Marconi Road to Adrienne Road, continuing south on Adrienne Road to Belmar Boulevard; thence easterly on Belmar Boulevard and 16th Avenue to the intersection of State Highway 71; thence southerly on State Highway 71 to the intersection of State Highway 35; thence northwesterly along State Highway 35 to State Highway 34 at the Brielle Circle; thence northwesterly along State Highway 34 to

the Garden State Parkway at Exit 96; thence southwesterly along the Garden State Parkway to the intersection of the Monmouth, Ocean County boundary; thence westerly along that boundary to the intersection of the Central Railroad of New Jersey tracks (now Conrail); thence southwesterly along the tracks of the Central Railroad of New Jersey (now Conrail) to its junction with the tracks of the Pennsylvania Railroad near Whiting; thence easterly along the tracks of the Pennsylvania Railroad to its intersection with the Garden State Parkway near South Toms River; thence southerly along the Garden State Parkway to its intersection with the boundary of the Bass River State Forest; thence southerly, and thence westerly, along the Bass River State Forest to its intersection with the Garden State Parkway in Bass River Township; thence southerly along the Garden State Parkway to its intersection with Alt. 559, and thence northwesterly along Alt. 559 to its intersection with County Road 559 at Gravelly Run; thence northwesterly along County Road 559 to its intersection with U.S. 40 and S.R. 50 at Mays Landing; thence westerly along combined U.S. 40 and S.R. 50 to its intersection with S.R. 40; thence westerly along S.R. 40 to its intersection with S.R. 50; thence southerly on S.R. 50 to its intersection with Buck Hill Road near Buck Hill; thence westerly along Buck Hill (River Road also Head of River Road and Aetna Drive) Road to its intersection with S.R. 49; thence southeasterly along S.R. 49 to its intersection with S.R. 50; thence southeasterly along S.R. 50 to its intersection with County Road 585 (now County Road 610); thence southwesterly along County Road 585 (now County Road 610) to its intersection with S.R. 47 at Dennisville; thence northwesterly along S.R. 47 to its intersection with State Road 49 at Millville; thence through Millville along State Road 49 to its intersection with County Road 610 (Cedar Street); thence southwesterly along County Road 610 (Cedar Street) to its intersection with County Road 555 (Race Street); thence southerly along County Road 555 (Race Street) to its intersection with County Road 27 (now County Road 627); thence southerly along County Road 27 (now County Road 627) to its intersection with County Road 70 (now County Road 670); thence southerly on County Road 70 (now County Road 670) to the Center of Mauricetown; thence through Mauricetown westerly on County Road 548 (now County Road 676) to its intersection with the tracks of the Central Railroad of New Jersey (now Conrail); thence northwesterly on the tracks of the Central Railroad of New Jersey (now Conrail) to its intersec-

tion with County Road 98 (now County Road 698); thence easterly along County Road 98 (now County Road 698) to the intersection with County Road 38 (now County Road 638); thence northerly along County Road 38 (now County Road 638) to its intersection with S.R. 49 east of Bridgeton; thence westerly along S.R. 49 through Bridgeton to its intersection with West Avenue; thence south on West Avenue to its intersection with County Road 5 (Roadstown Road) (now County Road 626); thence westerly along County Road 5 (Roadstown Road) (now County Road 626) to Roadstown; thence northwesterly along the Roadstown Road to County Road 47 (now County Road 647); thence southwesterly along County Road 47 (now County Road 647) to its intersection with County Road 19 (now County Road 623); thence along County Road 19 (now County Road 623) northwesterly to Gum Tree Corner; thence northwesterly along County Road 19 (now County Road 623) from Gum Tree Corner across Stowe Creek to its intersection with Salem County Road 59 (now County Road 623) (Hancock's Bridge Road); thence northwesterly along County Road 59 (now County Road 623) to its intersection with County Road 51 (now County Road 651) at Coopers Branch; thence northeasterly along County Road 51 (now County Road 651) to its intersection with S.R. 49 at Quinton; thence northwesterly along S.R. 49 to its intersection with County Road 50 (now County Road 650); thence southwesterly along County Road 50 (now County Road 650) to its intersection with County Road 58 (now County Road 658); thence southerly on County Road 58 (now County Road 658) to its intersection with County Road 24 (now County Road 624); thence westerly along County Road 24 (now County Road 624) to its intersection with County Road 65 (now County Road 637); thence northeasterly along County Road 65 (now County Road 637) to its intersection with County Road 665 (Walnut Street); thence northerly along County Road 65 (now County Road 665) (Walnut Street) to its intersection with County Road 4 (now County Road 633); thence westerly along County Road 4 (now County Road 633) to its intersection with County Road 627; thence northerly along County Road 627 to its intersection with County Road 661; thence easterly along County Road 661 to its intersection with State Road 49; thence northerly along State Road 49 (Front Street) to its intersection with County Road 57 (now County Road 657); thence easterly along County Road 57 (now County Road 657) to its intersection with State Road 45; thence northerly along

State Road 45 to its intersection with County Road 540 at Pointers; thence northerly and northwesterly along County Road 540 (Pointers Auburn Road/Deepwater-Slapes Corner Road) to its intersection with the New Jersey Turnpike; thence westerly along the New Jersey Turnpike to its intersection with County Road 33 (now County Road 551); thence southerly along County Road 33 (now County Road 551) to its intersection with State Road 49; thence southeasterly along S.R. 49 to its intersection with County Road 26 (now County Road 632); thence northwesterly along County Road 26 (now County Road 632) to the Killcohook National Wildlife Refuge; thence northwesterly along this northeasterly boundary to the limits of the State's territorial jurisdiction on the Delaware River; provided, however, that the coastal area shall not include all that certain area in Cape May county lying within a line beginning at the intersection of S.R. 47 and County Road 54 (now County Road 654); thence westerly on County Road 54 (now County Road 654); to the intersection of County Road 3 (now County Road 603); thence southeasterly on County Road 3 (now County Road 603) through the intersection of County Road 3 (now County Road 603) with County Road 13 (now County Road 639) to the intersection with County Road 47 (now County Road 647); thence easterly and northerly along County Road 47 (now County Road 647) to its intersection with U.S. Route 9; thence northerly along U.S. Route 9 to its intersection with State Road 47; thence westerly along State Road 47 to its intersection with County Road 54 (now County Road 654).

5. Section 5 of P.L.1973, c.185 (C.13:19-5) is amended to read as follows:

C.13:19-5 Development permits required.

5. A permit issued pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) shall be required for:

- a. A development located in the coastal area on any beach or dune;
- b. A development located in the coastal area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development, in:

(1) A development if there is no intervening development with an above ground structure, excluding any shore protection struc-

ture or sand fencing, that is either completed or under active construction between the proposed site of the development and the mean high water line of any tidal waters;

(2) A residential development having three or more dwelling units if there is an intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the dwelling units and the mean high water line of any tidal waters;

(3) A commercial development having five or more parking spaces if there is an intervening development with an above ground structure, excluding any shore protection structure or sand fencing, that is either completed or under active construction between the proposed site of the commercial development and the mean high water line of any tidal waters; or

(4) A public development or industrial development;

c. A development located in the coastal area between a point greater than 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest federal decennial census, that would result, either solely or in conjunction with a previous development, in:

(1) A residential development having 25 or more dwelling units;

(2) A commercial development having 50 or more parking spaces; or

(3) A public development or industrial development;

d. A development located in the coastal area at a point beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a municipality which meets the criteria of a "qualifying municipality" pursuant to section 1 of P.L.1978, c.14 (C.52:27D-178), or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest federal decennial census, that would result, either solely or in conjunction with a previous development, in:

(1) A residential development having 75 or more dwelling units;

(2) A commercial development having 150 or more parking spaces; or

(3) A public development or industrial development; or

e. Except as otherwise provided in subsection c. and subsection d. of this section, a development in the coastal area at a point beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development, in:

(1) A residential development having 25 or more dwelling units;

(2) A commercial development having 50 or more parking spaces; or

(3) A public development or industrial development.

C.13:19-5.1 Issuance of general permit.

6. Notwithstanding any other provision of law, rule or regulation to the contrary, the commissioner is authorized to issue a general permit in lieu of a permit issued pursuant to section 5 of P.L.1973, c.185 (C.13:19-5). The department shall adopt rules and regulations which identify the activities subject to general permit review, and which establish the criteria for the approval or disapproval of a general permit issued pursuant to this section. The department shall approve, approve with conditions, or disapprove an application for a general permit pursuant to this section in accordance with P.L.1975, c.232 (C.13:1D-29 et al.).

C.13:19-5.2 Permits not required, conditions.

7. A permit shall not be required pursuant to section 5 of P.L.1973, c.185 (C.13:19-5) for:

a. A development which has received preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or a final municipal building or construction permit on or prior to the effective date of this section, or a residential development which has received preliminary subdivision approval or minor subdivision approval on or prior to the effective date of this section where no subsequent site plan approval is required, provided that, in any of the cases identified above, construction begins within three years of the effective date of this section, and continues to completion with no lapses in construction activity of more than one year. This subsection shall not apply to any development that required a permit pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) prior to the effective date of this section;

b. The reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and federal law;

c. The enlargement of any development if the enlargement does not result in:

(1) the enlargement of the footprint of the development; or

(2) an increase in the number of dwelling units within the development;

d. The construction of a patio, deck or similar structure at a residential development;

e. Services provided, within the existing public right-of-way, by any governmental entity which involve:

(1) the routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways;

(2) public highway lane widening, intersection and shoulder improvement projects which do not increase the number of travel lanes; or

(3) public highway signing, lighting, guiderail and other nonintrusive safety projects; or

f. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

A development subject to any exemption provided in this section shall be required to satisfy all other applicable requirements of law.

8. Section 6 of P.L.1973, c.185 (C.13:19-6) is amended to read as follows:

C.13:19-6 Application for permit.

6. Any person proposing to construct or cause to be constructed, or to undertake or cause to be undertaken, as the case may be, a development in the coastal area shall file an application for a permit, if so required pursuant to section 5 of P.L.1973, c.185 (C.13:19-5), with the commissioner, on forms and with any information the commissioner may prescribe. The application shall include an environmental impact statement which shall provide the information needed to evaluate the effects of a proposed development upon the environment of the coastal area. The

department shall adopt rules and regulations that set forth the contents required in an environmental impact statement, and the conditions under which the commissioner may vary the content requirements of an environmental impact statement or waive the requirement that an environmental impact statement be submitted.

9. Section 8 of P.L.1973, c.185 (C.13:19-8) is amended to read as follows:

C.13:19-8 Declaration of completeness of application.

8. a. Within 20 working days following receipt of an application, the commissioner shall issue a notification to the applicant in writing regarding its completeness. The commissioner may declare the application to be complete for filing or may notify the applicant of specific deficiencies. The commissioner, within 15 days following the receipt of additional information to correct deficiencies, shall issue a notification to the applicant of the completeness of the amended application. The application shall not be considered to be filed until it has been declared complete by the commissioner.

b. The commissioner, within 15 days of declaring the application complete for filing, shall set a date for either a public hearing or a public comment period. The date for the public hearing or the start of the public comment period shall be set not later than 60 days after the application is declared complete for filing.

10. Section 9 of P.L.1973, c.185 (C.13:19-9) is amended to read as follows:

C.13:19-9 Hearing, comment period.

9. a. The commissioner, or a member of the department designated by the commissioner, may hold a hearing to afford interested parties the opportunity to present, orally or in writing, their position concerning the filed application and any data they may have developed in reference to the environmental or other relevant effects of the proposed development. The department shall adopt rules and regulations which set forth the conditions under which a hearing is to be held. If no hearing is held, the department shall provide for a 30-day comment period and shall provide sufficient public notice as to the commencement of the comment period.

b. The commissioner, within 15 days after the hearing, if one is held, or 15 days after the close of the comment period if no hearing is held, may require an applicant to submit any additional information necessary for the complete review of the application.

c. The department shall approve, approve with conditions, or disapprove an application for a permit pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) within 60 days after the hearing, if one is held, or within 60 days after the close of the comment period if no hearing is held. In the event the commissioner requires additional information as provided in subsection b. of this section, the department shall approve, approve with conditions, or disapprove an application within 90 days following receipt of the additional information.

11. Section 10 of P.L.1973, c.185 (C.13:19-10) is amended to read as follows:

C.13:19-10 Review of applications; required findings.

10. The commissioner shall review filed applications, including any environmental impact statement and all information presented at public hearings or during the comment period, or submitted during the application review period. A permit may be issued pursuant to this act only upon a finding that the proposed development:

a. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards.

b. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region.

c. Provides for the collection and disposal of litter, recyclable material and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare.

d. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies.

e. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region.

f. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare.

g. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing public scenic attributes at the site and within the surrounding region.

12. Section 11 of P.L.1973, c.185 (C.13:19-11) is amended to read as follows:

C.13:19-11 Grounds for denial of permit application; conditional permit; approval of nuclear electricity generating facility.

11. Notwithstanding the applicant's compliance with the criteria listed in section 10 of P.L.1973, c.185 (C.13:19-10), if the commissioner finds that the proposed development would violate or tend to violate the purpose and intent of this act as specified in section 2 of P.L.1973, c.185 (C.13:19-2), or that the proposed development would materially contribute to an already serious and unacceptable level of environmental degradation or resource exhaustion, the commissioner may deny the permit application, or the commissioner may issue a permit subject to such conditions as the commissioner finds reasonably necessary to promote the public health, safety and welfare, to protect public and private property, wildlife and marine fisheries, and to preserve, protect and enhance the natural environment. The construction and operation of a nuclear electricity generating facility shall, however, not be approved by the commissioner unless the commissioner finds that the proposed method for disposal of radioactive waste material to be produced or generated by the facility will be safe, conforms to standards established by the Nuclear Regulatory Commission and will effectively remove danger to life and the environment from such waste material.

13. Section 1 of P.L.1986, c.145 (C.13:19-11.1) is amended to read as follows:

C.13:19-11.1 Low, moderate income housing, no conditions for.

1. Notwithstanding the provisions of any rule or regulation to the contrary, the department shall not require the provision for low and moderate income housing as a condition for approval of an application to construct or undertake a development in the coastal area pursuant to the provisions of P.L.1973, c.185 (C.13:19-1 et seq.).

14. Section 14 of P.L.1973, c.185 (C.13:19-14) is amended to read as follows:

C.13:19-14 Continuance in force of issued permit.

14. In the event of rental, lease, sale or other conveyances by an applicant to whom a permit is issued, such permit, with any conditions, shall be continued in force and shall apply to the new tenant, lessee, owner, or assignee so long as there is no change in the nature of the development set forth in the original application.

15. Section 17 of P.L.1973, c.185 (C.13:19-17) is amended to read as follows:

C.13:19-17 Rules, regulations.

17. a. The department shall, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations to effectuate the purposes of this act.

b. Within one year of the enactment date of P.L.1993, c.190 (C.13:19-5.1 et al.), the department, in consultation with the State Planning Commission and county and municipal governments located in the coastal area, as defined in section 4 of P.L.1973, c.185 (C.13:19-4), shall adopt new rules and regulations to implement P.L.1993, c.190 (C.13:19-5.1 et al.). Any rules or regulations adopted pursuant to this subsection shall be closely coordinated with the provisions of the State Development and Redevelopment Plan adopted pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) and the federal "Coastal Zone Management Act of 1972," 16 U.S.C. §1451 et seq.

16. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to read as follows:

C.13:19-18 Violations, penalties; "Cooperative Coastal Monitoring Enforcement Fund."

18. a. Whenever the department finds that a person has violated any provision of P.L.1973, c.185 (C.13:19-1 et seq.), or any regulation, rule, permit, or order adopted or issued by the department pursuant thereto, the department may:

(1) Issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;

(2) Bring a civil action in accordance with subsection c. of this section;

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section.

Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

b. Whenever the department finds that a person has violated any provision of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, the department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of

which the person is in violation, citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

c. The department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, and the court may proceed in the action in a summary manner.

Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Assessment of the violator for any cost incurred by the department in removing, correcting or terminating the adverse effects upon the land or upon water or air quality resulting from any violation of any provision of P.L.1973, c.185, or any regulation or rule adopted, or permit or order issued, by the department pursuant to that act, for which the action under this subsection may have been brought.

d. The department is authorized to assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than \$25,000 for each violation. No assessment may be levied pursuant to this subsection until after the violator has been notified by certified mail, personal service or any other means authorized under the New Jersey Rules of Court. The notice shall include a reference to the section or provision of P.L.1973, c.185, the regulation, rule, permit, or order issued by the department pursuant to that act that has been violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, including any interest that may accrue thereon if the penalty is not paid when due, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final

order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 30 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued.

Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court. For the purposes of this subsection, the date that a penalty is due is the date that written notice of the penalty is received by the person responsible for payment thereof, or such later date as may be specified in the notice.

e. Any person who violates the provisions of P.L.1973, c.185, any rule or regulation adopted pursuant thereto, or any permit or order issued by the department pursuant to that act, an administrative order issued pursuant to subsection b. of this section or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

Any penalty established pursuant to this subsection may be imposed and collected with costs in a summary proceeding pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

f. There is created in the department a special nonlapsing fund, to be known as the "Cooperative Coastal Monitoring Enforcement Fund." Except as otherwise provided in this section, all monies from penalties, fines, or recoveries of costs collected by the department pursuant to this section on and after the effec-

tive date of this section, shall be deposited in the fund. Interest earned on monies deposited in the fund shall be credited to the fund. Unless otherwise specifically provided by law, monies in the fund shall be utilized by the department for the cost of providing aircraft overflights for coastal monitoring, surveillance and enforcement activities conducted by the department and for the cost of administering P.L.1973, c.185 (C.13:19-1 et seq.). The department shall submit annually to the Legislature a report which provides an accounting of all monies deposited in the fund and the purposes for which monies in the fund are disbursed.

17. Section 19 of P.L.1973, c.185 (C.13:19-19) is amended to read as follows:

C.13:19-19 Applicability of act.

19. The provisions of this act shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws, including the authority of the department to regulate waterfront development pursuant to R.S.12:5-1 et seq. and municipal zoning authority. The provisions of this act shall not apply to those portions of the coastal areas regulated pursuant to enforceable orders under P.L.1970, c.272 (C.13:9A-1 et seq.).

18. R.S.12:5-3 is amended to read as follows:

Department approval required for waterfront development; exemptions.

12:5-3. a. All plans for the development of any waterfront upon any navigable water or stream of this State or bounding thereon, which is contemplated by any person or municipality, in the nature of individual improvement or development or as a part of a general plan which involves the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable, or any other similar or dissimilar waterfront development shall be first submitted to the Department of Environmental Protection and Energy. No such development or improvement shall be commenced or executed without the approval of the Department of Environmental Protection and Energy first had and received, or as hereinafter in this chapter provided.

b. The following are exempt from the provisions of subsection a. of this section:

(1) The repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building existing prior to January 1, 1981, provided the repair, replacement or renovation does not increase

the size of the structure and the structure is used solely for residential purposes or the docking or servicing of pleasure vessels;

(2) The repair, replacement or renovation of a floating dock, mooring raft or similar temporary or seasonal improvement or structure, provided the improvement or structure does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking or servicing of pleasure vessels; and

(3) Development in the coastal area, as defined in section 4 of P.L.1973, c.185 (C.13:19-4), landward of the mean high water line of any tidal waters.

19. Section 11 of P.L.1985, c.398 (C.52:18A-206) is amended to read as follows:

C.52:18A-206 Other plans, regulations unaffected; adoption of coastal planning policies.

11. a. The provisions of P.L. 1985, c.398 (C.52:18A-196 et al.) shall not be construed to affect the plans and regulations of the Pinelands Commission pursuant to the "Pinelands Protection Act," P.L. 1979, c.111 (C.13:18A-1 et seq.) or the Hackensack Meadowlands Development Commission pursuant to the "Hackensack Meadowlands Reclamation and Development Act," P.L.1968, c.404 (C.13:17-1 et seq.). The State Planning Commission shall rely on the adopted plans and regulations of these entities in developing the State Development and Redevelopment Plan.

b. The State Planning Commission may adopt, after the enactment date of P.L.1993, c.190 (C.13:19-5.1 et al.), the coastal planning policies of the rules and regulations adopted pursuant to P.L.1973, c.185 (C.13:19-1 et seq.), the coastal planning policies of the rules and regulations adopted pursuant to subsection b. of section 17 of P.L.1973, c.185 (C.13:19-17) and any coastal planning policies of rules and regulations adopted pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) thereafter as the State Development and Redevelopment Plan for the coastal area as defined in section 4 of P.L.1973, c.185 (C.13:19-4).

C.13:19-13.1 Coastal Area Review Board abolished upon completion date of duties.

20. a. The Coastal Area Review Board established pursuant to section 13 of P.L.1973, c.185 (C.13:19-13) is, upon the completion date of its duties, abolished, and all powers, functions and duties thereof shall terminate. Any appeal pending before the Coastal Area Review Board prior to the enactment date of this act

may be decided by the board. Any appeal initiated on or after the enactment date of this act shall be referred to the Office of Administrative Law.

b. For the purposes of this section, "completion date," with respect to the Coastal Area Review Board, shall mean the date upon which all decisions on appeal to the board from decisions by the commissioner pursuant to P.L.1973, c.185 (C.13:19-1 et seq.), have been rendered by the board, as certified by the voting members thereof. Notice of the certification of the completion date shall be published by the board in the New Jersey Register.

C.13:19-5.3 Waiving of permit requirement.

21. The commissioner may waive the permit requirement for development in the coastal area pursuant to P.L.1973, c.185 (C.13:19-1 et seq.) for any development that involves the grading or excavation of a dune by a governmental agency if the commissioner finds that such a waiver is warranted as a result of a storm, natural disaster or similar act of God.

22. Section 4 of P.L.1975, c.232 (C.13:1D-32) is amended to read as follows:

C.13:1D-32 Failure to take action within time period; application deemed approved.

4. In the event that the department fails to take action on an application for a construction permit within the 90-day period specified herein, then the application shall be deemed to have been approved; provided, however, that the time periods specified in P.L.1973, c.185 (C.13:19-1 et seq.) shall apply to applications for construction permits pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.).

C.13:1D-115.1 Annual report to Legislature.

23. In addition to the information required to be submitted annually to the Legislature pursuant to section 2 of P.L.1991, c.417 (C.13:1D-115), the department shall report annually to the Legislature on actions taken to reduce fees and increase the efficiency of application processing pursuant to section 6 of P.L.1973, c.185 (C.13:19-6), section 9 of P.L.1973, c.185 (C.13:19-9) and section 7 of P.L.1993, c.190 (C.13:19-5.2).

Repealer.

24. The following are repealed:

Section 7 of P.L.1973, c.185 (C.13:19-7);

Section 12 of P.L.1973, c.185 (C.13:19-12); and
 Section 16 of P.L.1973, c.185 (C.13:19-16).

Repealer.

25. Section 13 of P.L.1973, c.185 (C.13:19-13) is repealed.

26. This act shall take effect one year from the enactment date of this act, except that section 15, section 19 and section 20 shall take effect immediately, and section 25 shall take effect upon the completion date provided in subsection b. of section 20. The Commissioner of Environmental Protection and Energy and the State Planning Commission may take such anticipatory actions as may be necessary to provide for the timely implementation of this act on the effective dates set forth herein.

Approved July 19, 1993.

CHAPTER 191

AN ACT appropriating \$14,000,000 from the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, to assist projects for cultural center development.

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

1. There is appropriated to the State Council on the Arts in the Department of State from the "Cultural Centers and Historic Preservation Fund" created pursuant to section 20 of P.L.1987, c.265, the sum of \$14,000,000 for the purpose of awarding grants to assist projects of cultural center development, which sum shall include administrative costs. The following projects are eligible for funding from this appropriation up to amounts listed herein and subject to grant awards:

New Jersey Performing Arts Center.....	\$1,000,000
Count Basie/Monmouth County Arts Center	2,000,000
South Jersey Performing Arts Center	4,000,000
Trenton Performing Arts Center	800,000
William Carlos Williams Center.....	3,450,000
Park Theater	<u>2,750,000</u>
TOTAL	<u>\$14,000,000</u>

2. The State Council on the Arts shall award grants on a competitive basis for cultural center development in the State based upon the criteria established pursuant to section 4 of P.L.1987, c.265.

3. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1987, c.265.

4. This act shall take effect immediately.

Approved July 19, 1993.

CHAPTER 192

AN ACT authorizing the expenditure of funds by the New Jersey Wastewater Treatment Trust for the purpose of making loans to local government units to finance a portion of the costs of construction of wastewater treatment system 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. The New Jersey Wastewater Treatment Trust, established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.), is authorized to expend the aggregate sum of up to \$75,000,000, and any unexpended balance of the aggregate expenditures authorized pursuant to section 1 of P.L.1988, c.132, section 1 of P.L.1989, c.190, section 1 of P.L.1990, c.97, section 1 of P.L.1991, c.324 and section 1 of P.L.1992, c.37 for the purpose of making loans, to the extent sufficient funds are available, to local government units to finance a portion of the costs of construction of wastewater treatment system projects listed in sections 2, 3 and 4 of this act. The trust is also authorized to increase the aggregate sums by the amounts of capitalized interest and the bond issuance expenses as provided in subsection b. of section 7 of this act and by the amounts of reserve capacity expenses and the associated debt service reserve fund requirements for such reserve capacity expenses as provided in subsection c. of section 7 of this act. For the purposes of this act, "capitalized interest" means the amount equal to interest paid on

trust bonds which is funded with trust bond proceeds; "issuance expenses" means and includes, but need not be limited to, the costs of financial document printing, municipal bond insurance premiums, underwriters' discount, verification of financial calculations, the services of bond rating agencies and trustees, employment of accountants, attorneys, financial advisors, loan servicing agents, registrars, and paying agents and any other costs related to the issuance of trust bonds; and "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).

2. a. The New Jersey Wastewater Treatment Trust is authorized to expend funds for the purpose of making supplemental loans to the local government units listed below for the following wastewater treatment system projects:

<u>Project No.</u>	<u>Local Government Unit</u>	<u>Estimated Allowable Project Cost</u>
S340708-08-3	Camden County MUA	\$2,198,773
S340640-03-2	Camden County MUA	51,371
S340580-03-2	Phillipsburg, Town of	129,845
S340404-02-2	Long Hill (Passaic Township)	1,580,533
S340874-01-2	Phillipsburg, Town of	227,407
S340336-04-1	Long Branch SA	66,308
S340697-03-1	Bayshore Regional SA	8,581,686
S340794-04-1	Delran SA	1,413,842
S340628-03-1	Woodstown SA	<u>456,632</u>
	Total	<u>\$14,706,397</u>

b. The loans authorized in this section shall be made for the difference between the allowable loan amounts required by these projects based upon low bid building costs or 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 1989, 1992 and 1993, or for increased costs due to differing site conditions 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 section shall be made to the local government units listed, up to the individual amounts indicated and in the priority stated, to the

extent sufficient funds are available, except as any such project fails to meet the requirements of section 6 of this act.

c. The loans authorized in this section shall have priority over the wastewater treatment system projects listed in section 4 of this act.

3. The New Jersey Wastewater Treatment Trust is authorized to make loans to the local government units for the wastewater treatment system projects listed in 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.

4. The following wastewater treatment system projects shall be known and may be cited as the "State Fiscal Year 1994 Project Priority List":

<u>Project No.</u>	<u>Local Government Unit</u>	<u>Estimated Allowable Project Cost</u>
S340384-04	Musconetcong SA	\$7,967,500
S340541-03	Mt. Arlington Borough	4,992,134
S340936-01	Cape May County MUA	1,674,566
S340744-02	Sussex Borough	678,941
S340699-06A	Middlesex County UA	2,054,469
S340699-06B	Middlesex County UA	5,137,019
S340474-03	New Providence Borough	2,489,547
S340794-03	Riverside SA	3,791,450
S340573-03A	Sussex Borough	1,977,400
S340573-03B	Sussex County MUA	2,597,574
S340948-01	Old Tappan Borough	1,665,559
S340700-03	Northwest Bergen County UA	7,284,341
S340537-03	Mt. Olive Township	10,835,134
S340622-04	Wall Township	3,624,000
S340480-03	Pequannock Township	1,995,752
S340947-01	West Deptford Township	1,761,219
S340945-02	Old Bridge MUA	2,673,600
S340578-04	Manville Borough	962,635
S340932-01	Chatham Borough	268,250
S340945-03	Old Bridge MUA	<u>570,015</u>
	Total	<u>\$65,001,105</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), any proceeds from bonds issued by the trust to make loans for priority waste-

water treatment system projects listed in sections 2, 3 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 or earlier upon redemption.

A portion of the proceeds from bonds issued by the trust to make loans for priority wastewater treatment system 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 and the associated debt service reserve fund requirements; and for the payment of increased costs due to differing site conditions 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 Wastewater Treatment 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.1985, c.334 and any rules and regulations adopted pursuant thereto;

b. The loan shall be conditioned upon approval of a zero interest loan from the Department of Environmental Protection from the "Wastewater Treatment Fund" established pursuant to the "Wastewater Treatment Bond Act of 1985," P.L.1985, c.329;

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 50% of the total estimated allowable project cost of the wastewater treatment system, exclusive of capitalized interest and issuance expenses as provided in subsection b. of section 7 of this act, reserve capacity expenses and the associated debt service reserve fund requirements as provided in subsection c. of section 7 of this act, and increased costs due to differing site conditions 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 at or below the interest rate paid by the trust on the bonds issued to make the loans authorized by this act, adjusted for underwriting discount, 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); 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).

The priority list and authorization for the making of loans pursuant to this act shall expire on July 1, 1994, and any local government unit 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 Wastewater Treatment Trust is authorized to reduce the individual amount of loan funds made available to local government units pursuant to sections 2, 3 and 4 of this act based upon low bid building costs or 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). The trust is authorized to use any such reduction in the loan amount made available to a local government unit to cover that local government unit's increased costs due to differing site conditions 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, 3 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, 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, 3 and 4 of this act by the amount of reserve capacity expense, including the debt service reserve fund requirement associated with such reserve capacity expense, as may be allowed 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).

8. The expenditure of funds authorized pursuant to this act is subject to the provisions of P.L.1985, c.329 and P.L.1985, c.334 (C.58:11B-1 et seq.) and any rules and regulations adopted pursuant thereto.

9. This act shall take effect immediately.

Approved July 22, 1993.

CHAPTER 193

AN ACT appropriating moneys from the Wastewater Treatment Fund for the purpose of making zero interest loans to local government units to finance a portion of the costs of construction of wastewater treatment system projects.

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 "Wastewater Treatment Fund - State Revolving Fund Accounts" (hereinafter referred to as the "State Revolving Fund Accounts") contained within the "Wastewater Treatment Fund" and established pursuant to section 1 of P.L.1988, c.133 an amount not exceeding \$120,000,000 in federal funds and any fees and penalties received pursuant to the "Marine Protection, Research, and Sanctuaries Act of 1972," (33 U.S.C. §1401 et seq.), and any amendatory and supplementary acts thereto, as may be deposited in the State Revolving Fund Accounts. Any such amount shall be for the purpose of making zero interest loans, to the extent sufficient funds are available, to local government units to finance a portion of the costs of construction of wastewater treatment system 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. §1251 et seq.), the "Marine Protection, Research, and Sanctuaries Act of 1972," and any amendatory and supplementary acts thereto, and State law.

b. The department is authorized to make zero interest loans to the local government units for the wastewater treatment system projects listed in sections 2 and 3 of this act 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 also authorized to make zero interest loans to the local government units for the wastewater treatment system 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, or section 1 of P.L.1992, c.38, including amounts resulting from the low bid building cost or 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, and section 6 of P.L.1992, c.38, and from any repayments of loans deposited in the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, including any State Revolving Fund Accounts contained within the "Wastewater Treatment Fund."

2. a. The department is authorized to expend funds for the purpose of making supplemental zero interest loans to the local government units listed below for the following wastewater treatment system projects:

<u>Project No.</u>	<u>Local Government Unit</u>	<u>Estimated Allowable Project Cost</u>
S340708-08-3	Camden County MUA	\$2,198,773
S340640-03-2	Camden County MUA	51,371
S340580-03-2	Phillipsburg, Town of	129,845
S340404-02-2	Long Hill (Passaic Township)	1,580,533
S340874-01-2	Phillipsburg, Town of	227,407
S340336-04-1	Long Branch SA	66,308
S340697-03-1	Bayshore Regional SA	8,581,686
S340794-04-1	Delran SA	1,413,842
S340628-03-1	Woodstown SA	<u>456,632</u>
	Total	<u>\$14,706,397</u>

b. The loans authorized in this section shall be made for the difference between the allowable loan amounts required by these projects based upon low bid building costs or final building costs pursuant to section 6 of this act and the loan amounts certified by the commissioner in State fiscal years 1989, 1992 and 1993 or for increased costs due to differing site conditions 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 section shall be made to the local government units listed, up to the individual amounts indicated and in the priority stated, to the extent sufficient funds are available, except as any such project fails to meet the requirements of section 4 of this act.

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

3. The following wastewater treatment system projects shall be known and may be cited as the "State Fiscal Year 1994 Project Priority List":

<u>Project No.</u>	<u>Local Government Unit</u>	<u>Estimated Allowable Project Cost</u>
S340384-04	Musconetcong SA	\$7,967,500
S340541-03	Mt. Arlington Borough	4,992,134
S340936-01	Cape May County MUA	1,674,566
S340744-02	Sussex Borough	678,941
S340699-06A	Middlesex County UA	2,054,469
S340699-06B	Middlesex County UA	5,137,019
S340474-03	New Providence Borough	2,489,547
S340794-03	Riverside SA	3,791,450
S340573-03A	Sussex Borough	1,977,400
S340573-03B	Sussex County MUA	2,597,574
S340927-02	Hammonton Town of	1,228,981
S340948-01	Old Tappan Borough	1,665,559
S340700-03	Northwest Bergen County UA	7,284,341
S340537-03	Mt. Olive Township	10,835,134
S340622-04	Wall Township	3,624,000
S340480-03	Pequannock Township	1,995,752
S340947-01	West Deptford Township	1,761,219
S340945-02	Old Bridge MUA	2,673,600
S340578-04	Manville Borough	962,635
S340932-01	Chatham Borough	268,250
S340945-03	Old Bridge MUA	<u>570,015</u>
Total		<u>\$66,230,086</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.1985, c.329 and any rules and regulations adopted pursuant thereto;

b. The loan amount shall not exceed 50% of the total estimated allowable project cost of the wastewater treatment system;

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 Wastewater Treatment Trust pursuant to P.L.1993, c.192; except that this requirement shall not apply to Project No. S340927-02 (Town of Hammonton: \$1,228,981), for which a loan has been made by the trust pursuant to P.L.1992, c.37 for both phases of this local government unit's wastewater treatment system project;

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.1993, c.192 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 list and authorization for the making of loans pursuant to sections 2 and 3 of this act shall expire on July 1, 1994, and any local government unit 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 the individual amount of loan funds made available to local government units pursuant to sections 2 and 3 of this act based upon low bid building costs or 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.

7. The expenditure of the funds appropriated by this act is subject to the provisions and conditions of P.L.1985, c.329 and any rules and regulations adopted by the commissioner pursuant thereto.

8. The Department of Environmental Protection shall provide general technical assistance to any local government unit requesting assistance regarding wastewater treatment system project development or applications for funds for a project.

9. Prior to repayment to the "Wastewater Treatment Fund" pursuant to the provisions of section 16 of P.L.1985, c.329, repayments of loans made pursuant to this act may be utilized by the New Jersey Wastewater Treatment Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) 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 law, to the extent necessary to secure repayment of trust bonds issued to finance loans approved pursuant to P.L.1993, c.192, 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 local government units

receiving trust loans. To the extent that any loan repayment sums are used to secure trust bond repayments or administrative fee payments, the trust shall repay such sums to the department for deposit into the "Wastewater Treatment Fund."

10. The Commissioner of Environmental Protection is authorized to enter into a capitalization grant agreement as may be required pursuant to the "Water Quality Act of 1987" (33 U.S.C. §1251 et seq.).

11. a. The Director of the Division of Budget and Accounting in the Department of the Treasury is directed to transfer to the "Wastewater Treatment Fund" the entire sum of money, if any, appropriated to the Department of Environmental Protection for "Public Wastewater Facilities" in the "State Aid" section of P.L.1993, c.155. The sum transferred to the "Wastewater Treatment Fund" pursuant to this section is appropriated to the New Jersey Wastewater Treatment Trust established pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.). The trust shall deposit all or a portion of this sum as it may deem necessary and appropriate into one or more reserve funds established pursuant to section 11 of P.L.1985, c.334 (C.58:11B-11). These reserve funds shall include reserve funds constituted collectively as a water pollution control revolving fund for the purposes of the federal "Water Quality Act of 1987" and shall be known as the Trust Reserve Fund - State Revolving Fund Accounts; except that the trust shall not establish the Trust Reserve Fund - State Revolving Fund Accounts prior to the execution of a capitalization grant agreement entered into by the Commissioner of Environmental Protection pursuant to section 10 of this act.

b. Any portion of the sum appropriated to the trust pursuant to subsection a. of this section or subsection a. of section 11 of P.L.1989, c.189, subsection a. of section 11 of P.L.1990, c.99, subsection a. of section 11 of P.L.1991, c.325, or subsection a. of section 11 of P.L.1992, c.38, plus any net earnings received from the investment or deposit of such moneys by the trust not required by the trust to establish reserve funds as provided in this section, shall be returned to the "Wastewater Treatment Fund" and placed in any account therein as determined by the commissioner to be used by the department for making zero interest loans to local government units to finance a portion of the cost of the wastewater treatment system projects listed in sections 2 and 3 of this act up to the individual amounts indicated and in the priority stated, except

as any such amount may be reduced by the commissioner pursuant to section 6 of this act or if a project fails to meet the requirements of section 4 of this act; and except that the commissioner shall certify to the chairman of the trust that such funds are needed for zero interest loans before any transfer is made. In the event that the commissioner fails to make this certification, the unexpended balance not devoted to establishing reserve funds shall remain with the trust but shall not be expended by the trust until such expenditure is authorized pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.).

12. There is appropriated to the New Jersey Wastewater Treatment 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 State Revolving Fund Accounts contained within the "Wastewater Treatment Fund," 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 including the Trust Reserve Fund - State Revolving Fund Accounts established pursuant to section 11 of P.L.1985, c.334 (C.58:11B-11) and section 1 of P.L.1988, c.133; except that the certification shall not be made with respect to the Trust Reserve Fund - State Revolving Fund Accounts prior to the execution of a capitalization grant agreement entered into by the commissioner pursuant to section 10 of this act.

13. This act shall take effect immediately.

Approved July 22, 1993.

CHAPTER 194

AN ACT concerning the bonded indebtedness of the New Jersey Wastewater Treatment Trust, and amending P.L.1985, c.334.

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

1. Section 6 of P.L.1985, c.334 (C.58:11B-6) is amended to read as follows:

C.58:11B-6 Issuance of bonds.

6. a. Except as may be otherwise expressly provided in the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.), the trust may from time to time issue its bonds, notes or other obligations in any principal amounts as in the judgment of the trust shall be necessary to provide sufficient funds for any of its corporate purposes, including the payment, funding or refunding of the principal of, or interest or redemption premiums on, any bonds, notes or other obligations issued by it, whether the bonds, notes or other obligations or the interest or redemption premiums thereon to be funded or refunded have or have not become due, the establishment or increase of reserves or other funds to secure or to pay the bonds, notes or other obligations or interest thereon and all other costs or expenses of the trust incident to and necessary to carry out its corporate purposes and powers.

b. Whether or not the bonds, notes or other obligations of the trust are of a form and character as to be negotiable instruments under the terms of Title 12A of the New Jersey Statutes, the bonds, notes and other obligations are made negotiable instruments within the meaning of and for the purposes of Title 12A, subject only to the provisions of the bonds, notes and other obligations for registration.

c. Bonds, notes or other obligations of the trust shall be authorized by a resolution or resolutions of the trust and may be issued in one or more series and shall bear any date or dates, mature at any time or times, bear interest at any rate or rates of interest per annum, be in any denomination or denominations, be in any form, either coupon, registered or book entry, carry any conversion or registration privileges, have any rank or priority, be executed in any manner, be payable in any coin or currency of the United States which at the time of payment is legal tender for the payment of public and private debts, at any place or places within or without the State, and be subject to any terms of redemption by the trust or the holders thereof, with or without premium, as the resolution or resolutions may provide. A resolution of the trust authorizing the issuance of bonds, notes or other obligations may provide that the bonds, notes or other obligations be secured by a trust indenture between the trust and a trustee, vesting in the trustee any property, rights, powers and duties in trust consistent with the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) as the trust may determine.

d. Bonds, notes or other obligations of the trust may be sold at any price or prices and in any manner as the trust may determine. Each bond, note or other obligation shall mature and be paid not later than 20 years from the effective date thereof, or the certified useful life of the project or projects to be financed by the bonds, whichever is less.

All bonds of the trust shall be sold at such price or prices and in such manner as the trust shall determine, after notice of sale, published at least three times in at least three newspapers published in the State of New Jersey, and at least once in a publication carrying municipal bond notices and devoted primarily to financial news, published in New Jersey or the city of New York, the first notice to be at least five days prior to the day of bidding. The notice of sale may contain a provision to the effect that any or all bids made in pursuance thereof may be rejected. In the event of such rejection or of failure to receive any acceptable bid, the trust, at any time within 60 days from the date of such advertised sale, may sell such bonds at private sale upon terms not less favorable to the State than the terms offered by any rejected bid. The trust 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 private sale, without advertisement.

e. Bonds, notes or other obligations of the trust may be issued under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) without obtaining the consent of any department, division, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things, other than those consents, proceedings, conditions or things which are specifically required by P.L.1985, c.334 (C.58:11B-1 et seq.).

f. Bonds, notes or other obligations of the trust issued under the provisions of P.L.1985, c.334 (C.58:11B-1 et seq.) shall not be a debt or liability of the State or of any political subdivision thereof other than the trust and shall not create or constitute any indebtedness, liability or obligation of the State or any political subdivision, but all these bonds, notes and other obligations, unless funded or refunded by bonds, notes or other obligations, shall be payable solely from revenues or funds pledged or available for their payment as authorized in P.L.1985, c.334 (C.58:11B-1 et seq.). Each bond, note and obligation shall contain on its face a statement to the effect that the trust is obligated to pay the principal thereof or the interest thereon only from its revenues, receipts or funds pledged or available for their payment as authorized in P.L.1985, c.334 (C.58:11B-1 et seq.) and that nei-

ther the State, nor any political subdivision thereof, is obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the State, or any political subdivision thereof, is pledged to the payment of the principal of or the interest on the bonds, notes or other obligations.

g. The aggregate principal amount of bonds, notes or other obligations, including subordinated indebtedness of the trust, shall not exceed \$600,000,000.00, except that, for the purpose of implementing the Fiscal Year 1994 Financial Plan as approved by the Legislature pursuant to SCR No. 118 of 1993 and ACR No. 138 of 1993, the trust may exceed the foregoing limitations. In computing the foregoing limitations there shall be excluded all the bonds, notes or other obligations, including subordinated indebtedness of the trust, which shall be issued for refunding purposes, whenever the refunding shall be determined to result in a debt service savings, as hereinafter provided:

(1) Upon the decision by the trust to issue refunding bonds, and prior to the sale of those bonds, the trust shall transmit to the Joint Appropriations Committee's Subcommittee on Transfers, or its successor, a report that a decision has been made, reciting the basis on which the decision was made, including an estimate of the debt service savings to be achieved and the calculations upon which the trust relied when making the decision to issue refunding bonds. The report shall also disclose the intent of the trust to issue and sell the refunding bonds at public sale and the reasons therefor.

(2) The Joint Appropriations Committee's Subcommittee on Transfers shall have the authority to approve or disapprove the sales of refunding bonds as included in each report submitted in accordance with paragraph (1) of this subsection. The subcommittee shall notify the trust in writing of the approval or disapproval as expeditiously as possible.

(3) No refunding bonds shall be issued unless the report has been submitted to and approved by the Joint Appropriations Committee's Subcommittee on Transfers as set forth in paragraphs (1) and (2) of this subsection.

(4) Within 30 days after the sale of the refunding bonds, the trust shall notify the Subcommittee on Transfers of the result of that sale, including the prices and terms, conditions and regulations concerning the refunding bonds, the actual amount of debt service savings to be realized as a result of the sale of refunding bonds, and the intended use of the proceeds from the sale of those bonds.

(5) The subcommittee shall review all information and reports submitted in accordance with this subsection and may, on its own initiative, make observations to the trust, or to the Legislature, or both, as it deems appropriate.

h. Each issue of bonds, notes or other obligations of the trust may, if it is determined by the trust, be general obligations thereof payable out of any revenues, receipts or funds of the trust, or special obligations thereof payable out of particular revenues, receipts or funds, subject only to any agreements with the holders of bonds, notes or other obligations, and may be secured by one or more of the following:

(1) Pledge of revenues and other receipts to be derived from the payment of the interest on and principal of notes, bonds or other obligations issued to the trust by one or more local government units, and any other payment made to the trust pursuant to agreements with any local government units, or a pledge or assignment of any notes, bonds or other obligations of any local government unit and the rights and interest of the trust therein;

(2) Pledge of rentals, receipts and other revenues to be derived from leases or other contractual arrangements with any person or entity, public or private, including one or more local government units, or a pledge or assignment of those leases or other contractual arrangements and the rights and interest of the trust therein;

(3) Pledge of all moneys, funds, accounts, securities and other funds, including the proceeds of the bonds, notes or other obligations;

(4) Pledge of the receipts to be derived from the payments of State aid, payable to the trust pursuant to section 12 of P.L.1985, c.334 (C.58:11B-12);

(5) A mortgage on all or any part of the property, real or personal, of the trust then owned or thereafter to be acquired, or a pledge or assignment of mortgages made to the trust by any person or entity, public or private, including one or more local government units and the rights and interest of the trust therein.

i. The trust shall not issue any bonds, notes or other obligations, or otherwise incur any additional indebtedness, on or after November 5, 2005.

2. This act shall take effect immediately.

Approved July 22, 1993.

CHAPTER 195

AN ACT establishing a commission to review New Jersey's regulation of home work and home-based businesses and prescribing its membership, powers and duties.

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

1. The Legislature finds and declares that New Jersey's home work law, P.L.1941, c.308 (C.34:6-136.1 et seq.) was enacted to prevent worker exploitation and unfair competition among employers, insure enforcement of the laws governing employment outside the home and to protect consumers from goods of poor quality. By contrast, home work today is very often regarded as a desirable alternative to working outside the home, not only for women who want to combine a career with family responsibilities, but for entrepreneurs starting "cottage industries" and "telecommuters" who work at home, maintaining contact with the work place through word processing and telecommunications equipment. Thus, while the need to eliminate sweatshops, be they manual or electronic, continues, home-based businesses and employment must be permitted to develop in an economy which is quickly becoming service oriented.

2. There is created, in but not of the Department of Labor, a Home Work Regulation Review Commission which shall consist of eleven members, one of whom shall be the Commissioner of Labor or his designee, ex officio; one of whom shall be the Commissioner of Commerce and Economic Development or his designee, ex officio; one member of the Senate and one member of the General Assembly, who shall not be members of the same political party, appointed respectively by the President of the Senate and the Speaker of the General Assembly; and seven public members, who shall be appointed by the Governor with the advice and consent of the Senate, three of whom shall be representatives engaged in home work, at least one of whom shall be self-employed, and no more than two of whom shall be members of the same political party; two of whom shall be representatives of organized labor, but not members of the same political party; one of whom shall be a representative of a small business which for the last fiscal year had a gross income of less than \$100,000;

and one of whom shall be a representative of a large business which for the last fiscal year had a gross income of more than \$100,000, but not members of the same political party. All members shall serve without compensation but shall be entitled to receive necessary expenses in performing their duties. In the event of a vacancy on the commission, the vacancy shall be filled in the same manner in which the original appointment was made.

3. The commission shall organize as soon as convenient after the appointment of its members and shall elect a chairperson from among its members who shall be the approval officer for all expenditures by the commission. In the event of a vacancy in the position of chairperson, the vacancy shall be filled by election among the members of the commission who shall be serving following the occurrence of the vacancy. The commission may also designate from time to time a member of its staff or any other person to serve as its secretary.

4. It shall be the duty of the Home Work Regulation Review Commission to review P.L.1941, c.308 (C.34:6-136.1 et seq.) and related laws of this State and all relevant federal law currently regulating home work in this State; to study the respective needs and concerns of labor, management, small business owners, and the public with respect to home work and home-based businesses; to review legislative responses to this issue in other states; and to recommend to the Legislature and the Governor any modifications in State regulation of home work and home-based businesses it concludes is advisable based upon its findings.

5. In the performance of its work, the commission shall establish and maintain a working staff and be entitled to accept the assistance and services of employees of any department of the State Government, or any board, bureau, commission or agency thereof as may be made available to it, and to employ legal, stenographic, technical and clerical assistance, and incur traveling, printing and other miscellaneous expenses as it may deem necessary in order to perform its duties and to disseminate its report and proposals among those interested in the State, provided that the aggregate of all expenditures for these purposes shall be within the limits of the funds appropriated or otherwise made available to it therefor.

6. The commission shall prepare and submit to the Legislature and to the Governor a report setting forth its findings, conclusions and recommendations, accompanying it with any proposed statutory changes which it may desire to recommend for adoption by the Legislature, as soon as may be feasible.

7. This act shall take effect immediately. The commission shall continue in existence until the first day of the sixth month after the month in which it submits the report required by section 6 of this act.

Approved July 23, 1993.

CHAPTER 196

AN ACT establishing a Medicaid Salary Region Advisory Panel, amending P.L.1992, c.40 and making an appropriation.

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

1. There is established in the Department of Human Services a 13-member Medicaid Salary Region Advisory Panel. The members of the panel shall include: the Commissioners of Health and Human Services and the Director of the Division of Medical Assistance and Health Services, or their designees, who shall serve as ex officio, nonvoting members; two members of the Senate to be appointed by the President of the Senate, no more than one of whom shall be of the same political party; two members of the Assembly to be appointed by the Speaker of the General Assembly, no more than one of whom shall be of the same political party; two public members to be appointed upon the recommendation of the New Jersey Association of Non-Profit Homes for the Aging, one each to be appointed by the President of the Senate and the Speaker of the General Assembly; two public members to be appointed upon the recommendation of the New Jersey Association of Health Care Facilities, one each to be appointed by the President of the Senate and the Speaker of the General Assembly; and two members appointed by the Governor who have professional expertise in the area of Medicaid reimbursement of nursing facilities and who have

not in the last two years been employed by either the nursing home industry or a governmental agency.

The appointments to the panel shall be made within 30 days of the effective date of this act.

2. a. The Medicaid Salary Region Advisory Panel shall review the single Statewide salary region methodology used by the Department of Human Services to determine nursing facility salary costs that are reimbursed by the Medicaid program as to its fairness in providing adequate reimbursement for salary costs of necessary direct care personnel.

b. The panel shall establish a technical advisory board to provide such technical assistance as may be needed. The board shall consist of five persons appointed by the panel who have technical expertise in the area of nursing facility reimbursement.

c. In order to assist the board in its activities, the Departments of Health and Human Services shall make available salary information for all nursing facilities participating in the Medicaid program for the two most current years in both paper and computer format, or such other media as the panel may deem appropriate.

d. The panel shall submit its report concerning the single Statewide salary region methodology and any recommendations regarding the methodology to the Governor and the Legislature by October 1, 1993, along with an analysis as to the fiscal impact the recommendations may have on Medicaid expenditures for nursing facilities.

3. The following item in Section 1 of P.L.1992, c.40 (on page 122 of Senate Bill No. 1000 [1R]) is amended to read as follows:

GRANTS-IN-AID
54 DEPARTMENT OF HUMAN SERVICES
24 *Special Health Services*
7540 *Division of Medical Assistance and Health Service*
Grants-In-Aid

Notwithstanding the provisions of any law to the contrary and subject to federal approval, long term care facility rates shall be determined based on a single Statewide salary region, effective July 1, 1992. Rates shall be adjusted retroactive to July 1, 1992 to reflect the change in rate setting methodology. However, any facility which would lose reimbursement in excess of \$55,000 as a result of implementation of the single Statewide salary region in fiscal year 1993,

shall be reimbursed commencing April 1, 1993 for 25% of the loss in excess of \$55,000. This limitation is subject to federal approval and shall be implemented by prospectively adjusting the amount of reimbursement to which a facility is entitled.

4. There is appropriated to the Department of Human Services, Division of Medical Assistance and Health Services, \$50,000 from the General Fund and \$50,000 in federal funds for costs associated with the Medicaid Salary Region Advisory Panel.

5. This act shall take effect immediately.

Approved July 23, 1993.

CHAPTER 197

AN ACT concerning the New Jersey Economic Development Authority and supplementing chapter 1B of Title 34 of the Revised Statutes.

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

C.34:1B-62 Short title.

1. This act shall be known and may be cited as the "New Jersey Global Export Network Act."

C.34:1B-63 Findings, determinations.

2. The Legislature finds and determines that:

a. The rapid change in global political and economic events and the effects thereof on the economy of the United States in general, and New Jersey in particular, require this State to expand its role in the promotion of international trade and the exportation of New Jersey products and services;

b. Businesses located in this State currently export approximately \$8 billion in goods and services, and increased promotion of the exportation of products produced by New Jersey businesses has been shown to have a positive effect upon the overall economy by creating new jobs, promoting market diversification, aiding in the development of new product ideas and sources of supply, and expanding the market share of local businesses;

c. The New Jersey Economic Development Authority should provide increased financial assistance to small- and medium-sized businesses located in New Jersey which may have difficulty commencing or enhancing their export activities due to limitations on the availability of loan funds from financial institutions, and the existing export working capital loan and loan guarantee program of the authority should be further supplemented;

d. The activities of the State in promoting the export of New Jersey goods and services in the global marketplace have taken on greater significance in light of the possible approval by the United States Congress of federal implementing legislation for the North American Free Trade Agreement (NAFTA) with Canada and Mexico, the continuing negotiations on the General Agreement on Tariffs and Trade (GATT), Uruguay Round of Multi-Lateral Trade Negotiations, and the rapid progress toward European Community integration, which will provide new opportunities for American businesses to engage in fair competition in service markets of foreign countries;

e. In light of the European Community's program to establish a single internal market having largely been accomplished, with over 90% of the regulations having been adopted to remove trade barriers and other restrictions on the movement of goods, services and capital within the 12 European Community countries, the European Community markets offer dramatically increased opportunities for export trade by New Jersey firms;

f. The State's export trade with Mexico can be further enhanced through increased emphasis on the export potential of the State's industrial sector in the fields of analytical and laboratory equipment, electronics, plastics, health and medical equipment, high-tech industries and transfer of technology to the manufacturing sector;

g. The emergence of new export markets in the republics of the former Soviet Union provides increased opportunities for New Jersey firms to export products and services that are in high demand in these areas, especially in the fields of environmental technology, pharmaceuticals, medical technology, food processing and telecommunications; and

h. Given the importance to New Jersey of exporting more of the State's goods and services to foreign markets, it is in the public interest to establish a supplemental program with the active participation of New Jersey banks to offer New Jersey businesses export finance assistance for fixed asset needs or loans for working capital, to authorize the Economic Development Authority to solicit the participation of certain financial institutions in support

thereof, to utilize moneys made available for such purposes pursuant to the "Economic Recovery Fund Act," and other programs administered by the authority, and to thereby promote New Jersey's role in the expanding global marketplace.

C.34:1B-64 Definitions.

3. As used in this act:

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Eligible export business" means a small- or medium-sized business which has its principal place of business located in this State and is engaged in the provision of goods or services to foreign export markets. The authority shall promulgate by rule a detailed definition which shall set forth the criteria to be used to determine eligibility for the program pursuant to the provisions of this act.

"Fixed assets" means any real property, interests in real property, plants, equipment, and other assets commonly accepted as fixed assets.

"Participating bank" means a bank as defined pursuant to section 1 of P.L.1948, c.67 (C.17:9A-1) deemed eligible by the authority for participation in the program.

"Program" means the "New Jersey Global Export Network Program" established by the authority pursuant to section 4 of this act.

"Working capital" means those liquid capital assets other than fixed assets.

C.34:1B-65 "New Jersey Global Export Network Program."

4. The New Jersey Economic Development Authority shall, in consultation with the Division of International Trade and the Division of Economic Development in the Department of Commerce and Economic Development, establish the "New Jersey Global Export Network Program," to assist eligible export businesses to expand their role in the exportation of New Jersey products and services. The authority shall give priority consideration to eligible export businesses utilizing locally produced materials and supplies to add at least 50% of the value to the products or services. As used in this section, "locally produced materials and supplies" means articles, materials and supplies produced or manufactured in this State. The activities of the program shall be deemed to be supplementary to, and not in lieu of, the powers of the authority prescribed by law.

C.34:1B-66 "Global Export Network Assistance Fund."

5. a. In order to effectuate the purposes of the program, the authority shall establish and maintain a special non-lapsing

revolving fund to be known as the "Global Export Network Assistance Fund," hereinafter the "network assistance fund," which shall be credited with: (1) an amount from the Economic Recovery Fund established pursuant to section 4 of P.L.1992, c.16 (C.34:1B-7.13) which the authority determines is necessary to effectively implement the program, within the limits of funding available from the Economic Recovery Fund, based upon the response to the program by eligible export businesses and participating banks; (2) any moneys that shall be received by the authority from the repayment of the moneys in the network assistance fund used to provide direct loans or revolving credit lines pursuant to this act and interest thereon; and (3) other moneys of the authority, including but not limited to, any moneys available from other business loan programs administered by the authority which it determines to deposit therein.

b. The authority may use the moneys in the network assistance fund established pursuant to this section for:

(1) funding direct loans or revolving lines of credit agreements for eligible export businesses for the production of goods and services for export, and guaranteeing up to 25% of the loans or lines of credit provided by participating banks, in accordance with section 7 of this act;

(2) making payments in fulfillment of the terms of any direct loans, revolving lines of credit agreements, or guarantee agreements, entered into pursuant to section 7 of this act; and

(3) defraying the administrative costs of the authority in carrying out the purposes and provisions of this act.

c. The portion of the direct loans or lines of credit provided by participating banks may be guaranteed by the authority pursuant to section 7 of this act only if an eligible export business has qualified therefor by demonstrating to the satisfaction of the authority that the eligible export business has the ability to develop new or expanded export activities, with particular emphasis on products or services which will be in high demand as a result of the expected approval of the North American Free Trade Agreement (NAFTA), the General Agreement on Trade and Tariffs (GATT) and the European Community (EC) integration, and that the eligible export business has sufficient ability, reputation and credit-worthiness.

d. The maximum amount and term of the loan, line of credit or guarantee made pursuant to this act shall be determined by the authority.

C.34:1B-67 Establishment of reserves, liquid reserves.

6. The authority shall establish sufficient reserves and liquid reserves, aside from those moneys required to provide a sufficient

and actuarially sound basis for its pledges contained in any loan, line of credit or guarantee agreement entered into pursuant to this act.

C.34:1B-68 Agreements with participating banks.

7. The authority shall enter into agreements with participating banks to use the moneys from the network assistance fund to provide up to 25% of the direct loans or revolving lines of credit for fixed asset needs and working capital of eligible exporting businesses. The agreements shall further provide that the balance of the loans or lines of credit for financing the fixed asset needs and working capital of eligible export businesses shall come from participating banks. The authority may also use moneys from the network assistance fund to guarantee up to 25% of the portion of the loans or lines of credit to be provided by the participating banks in those cases where the authority determines that such a guarantee is necessary for an agreement authorized by this section. The agreements shall also provide for any other terms or conditions which the authority and the participating banks stipulate to as being necessary or desirable to make loans, establish and extend lines of credit, guarantee loans and otherwise effectuate the purpose of the program.

C.34:1B-69 Rules, regulations.

8. The authority shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations governing the making of loans, extending of credit and the issuance of guarantees pursuant to this act.

9. In addition to the duties of the authority required under section 6 of P.L.1983, c.303 (C.52:27H-65), the authority shall also prepare a report within a reasonable time after the end of one year following the effective date of this act. The report shall include, but not be limited to, a description of the demand for the New Jersey Global Export Network Program from eligible export businesses and participating banks, the efforts made by the authority to promote the program, the total amount of export loans, lines of credit or guarantees issued by the authority pursuant to the program and an assessment of the effectiveness of the program in meeting the goals of this act. The authority shall submit its report to the Governor and the Legislature, including any recommendations for legislation to improve the effectiveness of the program.

10. This act shall take effect immediately.

Approved July 23, 1993.

CHAPTER 198

AN ACT concerning the retail sale of alcoholic beverages 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.

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. 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 holiday 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 \$200.00 and not more than \$2,000.00. 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.

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 session 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 holiday 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. 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 holiday 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 \$100.00 and not more than \$2,000.00. 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 \$25.00 and not more than \$50.00. 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 \$300.00, for use by the owners of limousines shall be \$25.00 per vehicle, and

for use on a boat shall be \$50.00 on a boat 65 feet or less in length, \$100.00 on a boat more than 65 feet in length but not more than 110 feet in length, and \$300.00 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 \$50.00 and not more than \$150.00. 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 Commissioner of Alcoholic Beverage Control by rules and regulations.

2. This act shall take effect immediately.

Approved July 23, 1993.

CHAPTER 199

AN ACT creating a New Jersey Information Resources Management Commission and supplementing Title 52 of the Revised Statutes.

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

C.52:9XX-1 Findings, declarations.

1. The Legislature finds and declares that:
 - a. information is a valuable and strategic asset of the State and should be managed effectively for the benefit of the State and the public;
 - b. information technology is both the State's primary tool for reducing the costs of program operations and the key to success in providing quality services to the State's citizens;
 - c. information resources management is ultimately the responsibility of the top nontechnical managers of the government;
 - d. the Joint Legislative-Executive Information Processing Review Committee, established by correspondence between the President of the Senate and the Speaker of the General Assembly and the Governor to review the management of the State's information resources, found that a need exists for leadership and direction for all information resources management activities in the three branches of State government;
 - e. to meet that need, the Joint Legislative-Executive Information Processing Review Committee has recommended the establishment of a New Jersey Information Resources Management Commission, which would operate through consensus and respect the unique constitutional prerogatives of each of the three branches of State government, with representatives from all three branches and with responsibility for establishing policies and standards to govern information management services in the three branches based on the foundation set forth by the Joint Legislative-Executive Information Processing Review Committee.

C.52:9XX-2 New Jersey Information Resources Management Commission; created.

2. There is hereby created a New Jersey Information Resources Management Commission (hereinafter referred to as the "commission"). The commission shall consist of the following members:
 - a. two members of the Senate, who shall not be of the same political party, to be appointed by the President of the Senate;
 - b. two members of the General Assembly, who shall not be of the same political party, to be appointed by the Speaker of the General Assembly;
 - c. four members of the Executive Branch of the State government, who hold the position of Commissioner, Deputy

Commissioner, Assistant Commissioner or their equivalent, to be appointed by the Governor;

d. a member of the Judicial Branch, to be appointed by the Chief Justice of the Supreme Court; and

e. six public members of whom two each shall be appointed by the Governor, the President of the Senate and the Speaker of the General Assembly.

C.52:9XX-3 Members' terms.

3. Legislative members shall serve for the two-year legislative term in which they are appointed. Members of the Executive Branch shall serve at the pleasure of the Governor. The representative of the Judicial Branch shall serve at the pleasure of the Chief Justice of the Supreme Court. Public members of the commission shall serve for a term of two years and until their successors are appointed and qualified, except that of the appointments first made to the commission under this act, the Governor, the President of the Senate and the Speaker of the General Assembly each shall appoint one public member for a term of one year and one public member for a term of two years. In the case of the initial appointments of public members, the members of the commission other than the public members shall recommend to each appointing officer at least three names for each appointment to be made and the appointing officer shall make an appointment from among those persons named. Thereafter, all members of the commission shall recommend to the appropriate appointing officer at least three names for each appointment to be made and the appointing officer shall make an appointment from among those persons named. Any vacancy in the membership of the commission shall be filled in the same manner as the original appointment and for the unexpired term only. The commission members shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

C.52:9XX-4 Immediate organization; chairman, vice chairman selection.

4. The commission shall organize as soon as possible after the appointment of its members and shall select annually a chairman and a vice chairman from among its members.

C.52:9XX-5 Executive Director, employees, appointment.

5. a. The commission shall appoint an executive director, who shall serve at its pleasure and who shall be in the unclassified service of the Civil Service. To the extent assistance is not available

under subsection b. of this section, the commission may appoint other employees as may be necessary, whose employment shall be in the unclassified service of the Civil Service, except that employees performing stenographic or clerical duties shall be in the career service and appointed pursuant to Title 11A (Civil Service) of the New Jersey Statutes. Permanent career service employees who are appointed to an unclassified position with the commission and who are later separated from service with the commission shall have a right of reinstatement to the career service to a level held prior to service with the commission, unless the employee has been separated, after opportunity for hearing, from service with the commission for reasons which constitute cause for removal from the career service.

b. The commission may call to its assistance and avail itself of the services of such employees of the State as it may require and as may be available to it for that purpose.

C.52:9XX-6 Duties of executive director.

6. The executive director shall serve as secretary to the commission and shall be responsible for the selection of properly qualified staff members. Staff members shall have backgrounds appropriate to the work of the commission. The commission is authorized to contract with outside providers for services in support of commission responsibilities and documented as unavailable to the commission.

C.52:9XX-7 Commission's duties.

7. The commission shall:

a. initiate and oversee an ongoing Statewide information management planning process in State government in accordance with the strategic plan submitted to the commission pursuant to section 12 of this act;

b. establish policies, procedures, and standards, in accordance with the strategic plan submitted to the commission pursuant to section 12 of this act, for all information management services in the three branches of State government, including, but not limited to: (1) information access and sharing; (2) security and privacy; (3) evaluation systems; (4) information systems and telecommunications architecture; (5) procurement; and (6) human resources management;

c. review Executive, Legislative and Judicial information management master plans and revisions thereof;

d. develop audit, oversight and evaluation mechanisms to monitor compliance with, and the effectiveness of, the policies, procedures, and standards established by the commission;

- e. establish a Statewide inventory system for information resources management in State government; and
- f. establish advisory committees, when appropriate.

C.52:9XX-8 Commission's duty to consult.

8. The commission and its staff shall consult and work closely with appropriate parties in the three branches in the development and implementation of policies, procedures, and standards as specified in section 7 of this act.

C.52:9XX-9 Information management in the three branches; establishment.

9. The Governor, in the case of the Executive Branch, the Chief Justice of the Supreme Court, in the case of the Judicial Branch, and the President of the Senate and the Speaker of the General Assembly, in the case of the Legislative Branch, each shall establish a body to develop an information management master plan and to provide oversight and coordination of and set priorities for branch information management activities. Each such body may establish and define the functions of a central information operating agency within its respective branch. Individual departments, agencies and operating units within the three branches of State government shall be responsible for their respective information processing activities in accordance with the policies and procedures established by each branch's information management body or central information operating agency, as appropriate.

C.52:9XX-10 Reports.

10. The commission shall report monthly to the Governor, the President of the Senate, the Speaker of the General Assembly, and the Chief Justice, for as long as the Governor, President, Speaker or Chief Justice deems necessary. The commission shall provide additional reports as requested by the Governor, the President of the Senate, the Speaker of the General Assembly, or the Chief Justice. The financial records of the commission shall be audited annually by the State Auditor.

C.52:9XX-11 Annual report.

11. The commission shall publish an annual report, which shall include, but not be limited to, the following:

- a. a statement of long-term Statewide goals and objectives for information resources management in State government;
- b. a report on the accomplishments, initiatives, and problems of the reporting period;
- c. branch master plans for the next three years; and

- d. a current Statewide inventory of all information resources.

C.52:9XX-12 Strategic plan.

12. The Joint Legislative-Executive Information Processing Review Committee shall submit to the commission a strategic plan for information resources management in the three branches of State government as soon as possible after the establishment of the commission and may submit any other recommendations for the commission's consideration that it deems appropriate or desirable.

13. This act shall take effect immediately.

Approved July 23, 1993.

CHAPTER 200

AN ACT appropriating \$3,279,000 from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, and reappropriating \$13,693,750 from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, and \$2,879,750 from the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, to provide loans or grants, or both, to assist local government units to acquire lands for recreation and conservation purposes, and authorizing the use of certain unexpended balances, interest earnings, and loan payments for such 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 "1992 New Jersey Green Trust Fund" established pursuant to section 22 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of \$3,279,000; and there is reappropriated to the department from the "1989 New Jersey Green Trust Fund" established pursuant to section 19 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, the sum of \$13,693,750, and from the "Green Trust Fund" established pursuant to section 16 of the "New Jersey Green Acres Bond Act of 1983," P.L.1983,

c.354, the sum of \$2,879,750, to provide loans or grants, or both, to assist local government units to acquire lands for recreation and conservation purposes, which sums shall include administrative costs.

The following acquisition projects are eligible for funding with the moneys appropriated or reappropriated pursuant to this section:

<u>Local Government Unit</u>	<u>County</u>	<u>Project</u>	<u>Approved Amount</u>
Moorestown Twp.	Burlington	Garwood Rd. Tract Acq.	\$290,000
Cherry Hill Twp.	Camden	Point of Woods Acq.	\$250,000
Washington Twp.	Gloucester	Kandle Lake Park Acq.	\$1,600,000
Alexandria Twp.	Hunterdon	Alexandria Twp. Green Acq.	\$1,308,000
Hunterdon County	Hunterdon	Musconetcong Wtrshd. Pres. Acq.	\$3,830,000
Mercer County	Mercer	Banner Farm Acq.	\$1,034,000
Highlands Boro	Monmouth	Veterans Park Additions Acq.	\$850,000
Red Bank Boro	Monmouth	Riverside Gardens Acq.	\$1,300,000
Morris County	Morris	Patriots Path/ Schooleys Acq.	\$288,000
Mount Olive Twp.	Morris	Turkey Brook Park Acq.	\$2,136,000
Netcong Boro	Morris	Water Street Park Acq.	\$200,000
Rockaway Twp.	Morris	Marcella Recreation Acq.	\$1,506,000
Beach Haven Boro	Ocean	Beach Additions Acq.	\$750,000
Berkeley Twp.	Ocean	Berkeley Recreation Acq.	\$310,000
Little Egg Harbor Twp.	Ocean	Thomas Avenue Park Acq.	\$43,000
Seaside Park Boro	Ocean	Marinas Acq.	\$4,000,000
Wayne Twp.	Passaic	Schuyler-Colfax House Acq.	\$87,500
Liberty Twp.	Warren	Alexander/ Humphries Fld. Acq.	\$70,000

b. Any transfer of any funds or project sponsor, or change in project site, listed in subsection a. of this section or in subsection a. of section 1 of P.L.1993, c.266 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, the local government unit projects listed in P.L.1984, c.224, P.L.1985, c.479, P.L.1986, c.208, P.L.1988, c.23, P.L.1989, c.194, P.L.1991, c.13, P.L.1991, c.14, P.L.1991, c.15, P.L.1991, c.16, P.L.1991, c.522, section 1 of P.L.1993, c.266, section 1 of P.L.1993, c. 267, and section 1 of P.L.1993, c.201 shall be eligible for funding, including administrative costs, in a sequence consistent with the priority system established by

the Department of Environmental Protection, and shall require the approval of the Joint Budget Oversight Committee or its successor.

2. a. There is reappropriated to the Department of Environmental Protection the unexpended balances of the amounts appropriated pursuant to P.L.1984, c.224, P.L.1985, c.479, P.L.1986, c.208, P.L.1988, c.23, P.L.1989, c.194, P.L.1991, c.13, P.L.1991, c.14, P.L.1991, c.15, P.L.1991, c.16, and P.L.1991, c.522, from the "Green Trust Fund" established pursuant to the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, from the "Green Trust Fund" established pursuant to the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, and from the "1989 New Jersey Green Trust Fund" established pursuant to the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, for the purpose of making loans or grants, or both, to local government units for the projects listed in P.L.1984, c.224, P.L.1985, c.479, P.L.1986, c.208, P.L.1988, c.23, P.L.1989, c.194, P.L.1991, c.13, P.L.1991, c.14, P.L.1991, c.15, P.L.1991, c.16, P.L.1991, c.522, section 1 of this act, section 1 of P.L.1993, c.266, section 1 of P.L.1993, c.267, and section 1 of P.L.1993, c.201, and for the purpose of administrative costs associated with any such projects, to the extent such funds are available as a result of project withdrawals or cost savings.

b. There is appropriated to the Department of Environmental Protection such sums as may be or become available on or before June 30, 1994, due to interest earnings or loan repayments, in (1) the "Green Trust Fund" established pursuant to the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, (2) the "Green Trust Fund" established pursuant to the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, (3) the "1989 New Jersey Green Trust Fund" established pursuant to the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, and (4) the "1992 New Jersey Green Trust Fund" established pursuant to the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, for the purpose of making loans or grants, or both, to local government units for the projects listed in P.L.1984, c.224, P.L.1985, c.479, P.L.1986, c.208, P.L.1988, c.23, P.L.1989, c.194, P.L.1991, c.13, P.L.1991, c.14, P.L.1991, c.15, P.L.1991, c.16, P.L.1991, c.522, section 1 of this act, sec-

tion 1 of P.L.1993, c.266, section 1 of P.L.1993, c.267, and section 1 of P.L.1993, c.201, and for the purpose of administrative costs associated with any such projects.

3. Pursuant to the provisions of subsection c. of section 7 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, subsection c. of section 9 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, subsection c. of section 9 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, and subsection d. of section 4 of the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, as appropriate, all loans made to local government units with moneys appropriated or reappropriated pursuant to this act shall bear interest of not more than 2% per year and shall be for a term of not more than 20 years. All principal and interest payments repaid by the local government units shall be deposited into the respective "Green Trust Fund" from which the moneys were appropriated or reappropriated in accordance with the terms of a written loan agreement. The terms of the loan agreement shall be completed and executed on a form approved by the State Treasurer or his designee.

4. The expenditure of the sums appropriated or reappropriated by this act is subject to the provisions and conditions of P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354, as appropriate.

5. This act shall take effect immediately.

Approved July 23, 1993.

CHAPTER 201

AN ACT appropriating \$5,021,500 from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, and \$2,879,750 from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, and reappropriating \$721,000 from the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, and \$1,420,750 from the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, to provide loans or grants, or both, to assist local government units to acquire and 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 "1992 New Jersey Green Trust Fund" established pursuant to section 22 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of \$5,021,500, and from the "1989 New Jersey Green Trust Fund" established pursuant to section 19 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, the sum of \$2,879,750, and there is reappropriated to the department from the "Green Trust Fund" established pursuant to section 22 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, the sum of \$721,000, and from the "Green Trust Fund" established pursuant to section 16 of the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, the sum of \$1,420,750, to provide loans or grants, or both, to assist local government units to acquire and develop lands for recreation and conservation purposes, which sums shall include administrative costs.

The following acquisition and development projects are eligible for funding with the moneys appropriated or reappropriated pursuant to this section:

<u>Local Government Unit</u>	<u>County</u>	<u>Project</u>	<u>Approved Amount</u>
Camden City	Camden	Alberta Woods Dev.	\$90,000
Gloucester City	Camden	Highland Ave. Pond Dev.	\$150,000
East Orange City	Essex	Ambrose/Ward Mansion Acq.	\$835,000
Essex County	Essex	Branch Brook Dev.	\$1,000,000
Orange City Twp.	Essex	Bell Stadium Reconst. Dev.	\$1,000,000
Hoboken City	Hudson	Castle Point Park Dev.	\$750,000
Hudson County	Hudson	Urban Nature Centers Dev.	\$540,000
Jersey City	Hudson	Sgt. Anthony Park Dev.	\$290,000
Jersey City	Hudson	Marion/ Pavonia Pool Dev.	\$850,000
North Bergen Twp.	Hudson	Soccer Field Dev.	\$382,000
Union City	Hudson	44th Street Playground Dev.	\$300,000
Weehawken Twp.	Hudson	Soldiers & Sailors Mon. Dev.	\$500,000
West New York Town	Hudson	Miller Park and Stadium Dev.	\$1,000,000
New Brunswick City	Middlesex	4th Ward Park Acq.	\$1,200,000

Elizabeth City	Union	Elizabeth River Parkway Dev.	\$900,000
Plainfield City	Union	Library Park Dev.	\$256,000

b. Any transfer of any funds or project sponsor, or change in project site, listed in subsection a. of this section or in subsection a. of section 1 of P.L.1993, c.267 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, the local government unit projects listed in P.L.1984, c.224, P.L.1985, c.479, P.L.1986, c.208, P.L.1988, c.23, P.L.1989, c.194, P.L.1991, c.13, P.L.1991, c.14, P.L.1991, c.15, P.L.1991, c.16, P.L.1991, c.522, section 1 of P.L.1993, c.200, section 1 of P.L.1993, c.266, and section 1 of P.L.1993, c.267, that involve local government units eligible to receive State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), shall be eligible for funding, including administrative costs, in a sequence consistent with the priority system established by the Department of Environmental Protection, and shall require the approval of the Joint Budget Oversight Committee or its successor.

2. Pursuant to the provisions of subsection c. of section 7 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, subsection c. of section 9 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, subsection c. of section 9 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, and subsection d. of section 4 of the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, as appropriate, all loans made to local government units with moneys appropriated or reappropriated pursuant to this act shall bear interest of not more than 2% per year and shall be for a term of not more than 20 years. All principal and interest payments repaid by the local government units shall be deposited into the respective "Green Trust Fund" from which the moneys were appropriated or reappropriated in accordance with the terms of a written loan agreement. The terms of the loan agreement shall be completed and executed on a form approved by the State Treasurer or his designee.

3. The expenditure of the sums appropriated or reappropriated by this act is subject to the provisions and conditions of P.L.1992, c.88, P.L.1989, c.183, P.L.1987, c.265, and P.L.1983, c.354, as appropriate.

4. This act shall take effect immediately.

Approved July 23, 1993.

CHAPTER 202

AN ACT concerning water supply management, 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 6 of P.L.1981, c.262 (C.58:1A-6) is amended to read as follows:

C.58:1A-6 Permit system; development of guidelines.

6. a. The department in developing the permit system established by P.L.1981, c.262 (C.58:1A-1 et al.) shall:

(1) Permit privileges previously allowed pursuant to lawful legislative or administrative action, except that the department may, after notice and public hearing, limit the exercise of these privileges to the extent currently exercised, subject to contract, or reasonably required for a demonstrated future need. All diversion permits issued by the Water Policy and Supply Council prior to August 13, 1981 shall remain in effect until modified by the department pursuant to P.L.1981, c.262 (C.58:1A-1 et al.). Persons having or claiming a right to divert more than 100,000 gallons of water per day pursuant to prior legislative or administrative action, including persons previously exempted from the requirement to obtain a permit, shall renew that right by applying for a diversion permit, or water usage certification, as the case may be, no later than February 9, 1982. Thereafter, the conditions of the new diversion permit or water usage certification shall be deemed conclusive evidence of such previously allowed privileges.

(2) Require any person diverting 100,000 or more gallons of water per day for agricultural or horticultural purposes to obtain approval of the appropriate county agricultural agent of a five-year water usage certification program. This approval shall be based on standards and procedures established by the department. This program shall include the right to construct, repair or reconstruct dams or other structures, the right to divert water for irrigation, frost protection, harvesting and other agriculturally-related purposes, and the right to measure the amount of water diverted by means of a log or other appropriate record, and shall be obtained in lieu of any permit which would otherwise be required by P.L.1981, c.262 (C.58:1A-1 et al.).

(3) Require any person diverting more than 100,000 gallons per day of any waters of the State or proposing to construct any building or structure which may require a diversion of water to obtain a diversion permit. Prior to issuing a diversion permit, the department shall afford the general public with reasonable notice of a permit application, and with the opportunity to be heard thereon at a public hearing held by the department.

b. In exercising the water supply management and planning functions authorized by P.L.1981, c.262 (C.58:1A-1 et al.), particularly in a region of the State where excessive water usage or diversion present undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution of surface water supply due to excess groundwater diversion, the commissioner shall, after notice and public hearing as provided by and required pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), designate that region as an area of critical water supply concern.

In designating an area of critical water supply concern, the department shall be required to demonstrate that the specific area is stressed to a degree which jeopardizes the integrity and viability of the water supply source or poses a threat to the public health, safety, or welfare. This designation shall conform to and satisfy the criteria of an area of critical water supply concern as defined in rules and regulations adopted by the department pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

Those specific areas previously designated by the department as water supply critical and margin areas, considered as Depleted or Threatened Zones, respectively, prior to the effective date of P.L.1993, c.202 shall be considered to be areas of critical water

supply concern for the purposes of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.).

c. In designated areas of critical water supply concern, the department, in consultation with affected permittees and local governing bodies and after notice and public hearing, shall:

- (1) study water supply availability;
- (2) estimate future water supply needs;
- (3) identify appropriate and reasonable alternative water supply management strategies;
- (4) select and adopt appropriate water supply alternatives; and
- (5) require affected permittees to prepare water supply plans consistent with the adopted water supply management alternatives.

d. Following implementation of the adopted water supply management alternatives, the department shall monitor water levels and water quality within the designated area of critical water supply concern to determine the effectiveness of the alternative water supply management strategies selected. If the department determines that the alternatives selected are not effective in protecting the water supply source of concern, the department may revise the designation and impose further restrictions in accordance with the procedures set forth in this section. The results of all monitoring conducted pursuant to this section shall be reported to all affected permittees on an annual basis.

e. Nothing in P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall prevent the department from including, or require the department to include, the presently non-utilized existing privileges in any new, modified or future diversion permit issued to the present holder of these privileges, except as otherwise expressly provided in subsection b. of section 7 of P.L.1981, c.262 (C.58:1A-7).

2. Section 7 of P.L.1981, c.262 (C.58:1A-7) is amended to read as follows:

C.58:1A-7 Diversion of water; permit; renewal.

7. a. No person may divert more than 100,000 gallons per day of any waters of the State or construct any building or structure which may require a diversion of water unless he obtains a diversion permit or water usage certification, as appropriate, pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6).

b. Every diversion permit issued or water usage certification approved pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6)

shall be renewed by the department upon the expiration thereof, with any conditions deemed appropriate by the department, for the same quantity of water, except that the department may, after notice and public hearing, limit that quantity to the amount currently diverted, subject to contract, or reasonably required for a demonstrated future need. In designated areas of critical water supply concern, the department may, after notice and public hearing, modify the conditions of an existing diversion permit or water usage certification in order to (1) limit or reduce the quantity of water which lawfully may be diverted to the safe or dependable yield of the resource; (2) transfer the point of diversion; or (3) require a permittee to utilize alternate sources of water, upon a determination that the existing diversion or continued use of the same source in excess of the safe and dependable yield, as the case may be, adversely impacts or threatens to adversely impact the water resources of the State.

C.58:1A-7.3 Limitations on modification of existing diversion permit.

3. Notwithstanding the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or any other law, rule or regulation to the contrary, for a period not to exceed 10 years following the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.), the authority of the department to modify the conditions of an existing diversion permit issued or water usage certification approved pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) within the area designated and established by the department as Water Supply Critical Area II shall be limited as hereinafter provided:

a. No existing diversion permit or water usage certification shall be reduced to an amount less than that withdrawn from the Depleted and Threatened Zone in 1991 or that specified through application of the formulas set forth as follows, whichever is less:

(1) Depleted Zone base allocations:

$DZ = (0.65 \times D83) + (Dmax - D83)$ where:

DZ = Depleted Zone base allocation issued to a person and expressed in million gallons per year (MGY);

D83 = A person's total Annual Potomac-Raritan-Magothy aquifer system (PRM) withdrawal from the Depleted Zone in MGY in 1983; and

D_{max} = A person's total Annual PRM withdrawal from the Depleted Zone in any year between 1983 and 1991 in MGY.

The calculation of the Depleted Zone base allocation shall be based on the selection of one year for each affected permittee.

(2) Threatened Zone base allocations:

The Threatened Zone base allocation shall be equal to the maximum annual withdrawal from the Threatened Zone in any year between 1983 and 1991 in MGY.

In the case of those permittees with diversion permits for Depleted Zone and Threatened Zone withdrawals, the same year shall be used to calculate Depleted Zone allocations and Threatened Zone allocations.

The allocation for continued withdrawals for those industrial users whose withdrawals in 1991 were less than that withdrawn in any year between 1983 and 1990 due to economic conditions shall be calculated based upon the Depleted Zone and Threatened Zone formulas set forth in paragraphs (1) and (2) of this subsection and shall not be limited to the amount withdrawn in 1991.

In the calculation of revised PRM diversion permit withdrawal levels, the department shall consider the permittee's historic water use from the Depleted Zone and Threatened Zone.

The allocation represented by one-half of the difference between the total PRM allocation based upon the formula set forth in this subsection and the total 1991 withdrawal shall be designated as water allocation credits pursuant to section 5 of P.L.1993, c.202 (C.58:1A-7.4). These credits shall be available for transfer to areas designated for growth within the Water Allocation Credit Receiving Area as defined in subsection b. of this section.

b. Within the area designated and established by the department as Water Supply Critical Area II, those areas:

(1) north of the Rancocas Creek from its confluence with the Delaware River to the intersection of the southwest branch of the Rancocas Creek with State Route 38;

(2) north of State Route 38 to the start of County Route 530; and

(3) north of County Route 530 to the intersection of County Route 530 and State Route 70 near the Burlington-Ocean county boundary, shall be recognized as a Water Allocation Credit Receiving Area. The department shall not unreasonably withhold approval for the transfer of water allocation credits for local use only within this area unless it can be demonstrated that the withdrawals will result in a significant adverse impact on the aquifer system. The depart-

ment shall not unreasonably withhold approval of a permit modification seeking an increase in allocation where the permittee has obtained water allocation credits in an amount equal to the requested increase in withdrawal.

The areas described in paragraphs (1), (2) and (3) of this subsection shall be recognized as a Water Allocation Credit Receiving Area because hydrogeologic studies have shown that increased withdrawals from the PRM may be possible in this portion of the aquifer system without adverse impacts. Permittees within this area may receive water allocation credits and water conservation credits.

Water conservation credits shall be granted to any permittee in the Water Allocation Credit Receiving Area who can demonstrate a net reduction in annual water use over the 13-year period from 1978 through 1991, inclusive. The water conservation credits shall be equal to 50% of the difference between the maximum year withdrawal during this period and 1991, where the reduction can be documented as attributable to water conservation. The department shall approve the diversion permit modification to reflect the water conservation credits granted.

Permittees that have established water supply system interconnections in order to develop alternate supplies pursuant to an administrative order issued by the department prior to the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.) shall have the continuing right to transfer water through the interconnection if the diversion permitted under subsection a. of this section provides for the withdrawal that exceeds the needs of the users of the suppliers' system exclusive of the interconnection.

The supplier of an interconnected system shall have the right to obtain water allocation credits in an amount that would allow transfer of additional volumes through the interconnection provided that such additional volume does not exceed 50% of the volume transferred through the interconnection in 1991.

c. As used in this section, the boundary of the designated Water Supply Critical Area II corresponds to the average potentiometric contour 30 feet below sea level for the Potomac-Raritan-Magothy Aquifer as published in Water Levels in Major Artesian Aquifers of the New Jersey Coastal Plain, Water Resources Investigations Report 86-4028 of the United States Department of the Interior Geological Survey, 1983, and the surrounding margin area.

4. Section 8 of P.L.1981, c.262 (C.58:1A-8) is amended to read as follows:

C.58:1A-8 Provisions of permit.

8. Every permit issued pursuant to P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall include provisions:

- a. Fixing the term of the permit;
- b. Fixing the maximum allowable diversion, expressed in terms of a daily, monthly or annual diversion;
- c. Identifying and limiting the use or uses to which the water may be put;
- d. Requiring the diverter to meter the water being diverted and report the amount and quality of the water being diverted;
- e. Allowing the department to enter the diverter's facilities or property to inspect and monitor the diversion;
- f. Requiring that all water diverted for a nonconsumptive use be returned to a reasonably proximate body of water designated by the department;
- g. Allowing the transfer of a permit with the consent of the department, but only for the identical use of the waters by the transferee;
- h. Governing the operations and maintenance of the specific facilities, equipment or premises not otherwise established in regulations because of the unique nature of the facilities, equipment or premises;
- i. Permitting the department to modify, suspend or terminate the permit, after notice and public hearing, for violations of its conditions, P.L.1981, c.262 (C.58:1A-1 et al.), P.L.1993, c.202 (C.58:1A-7.3 et al.), regulations adopted or orders issued by the department, and when deemed necessary for the public interest;
- j. Permitting the department to modify the conditions of a diversion permit issued or water usage certification approved pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) in a designated area of critical water supply concern in order to (1) limit or reduce the quantity of water which lawfully may be diverted to the safe or dependable yield of the resource; (2) transfer the point of diversion; or (3) require a permittee to utilize alternate sources of water, upon a determination that the existing diversion or continued use of the same source in excess of the safe or dependable yield, as the case may be, adversely impacts or threatens to adversely impact the water resources of the State;
- k. Allowing the transfer of water allocation to a different point of diversion within a designated area of critical water supply concern with the approval of the department.

C.58:1A-7.4 Water Allocation Credit Transfer Program.

5. a. There is established in the department the Water Allocation Credit Transfer Program. The purpose of this program is to provide for the transfer of a privilege to divert water within an area of critical water supply concern, as designated by the commissioner pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6), without adversely impacting the aquifer.

b. Within 60 days of the effective date of P.L.1993, c.202, the department 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. These rules and regulations shall include:

(1) A procedure for the review and approval or disapproval of the transfer of water allocation credits; and

(2) A provision that a well for which all privileges to divert have been transferred shall be closed and capped to prevent the pumping of water from that well in the future.

c. The department shall provide for the expeditious review and approval of a plan submitted by a county which facilitates the transfer of water allocation credits. This review and approval may occur prior to the adoption of the rules and regulations required pursuant to this section.

C.58:1A-7.5 Establishment of Water Allocation Credit Exchange; regional exchange.

6. a. The governing body of a county wherein an area of critical water supply concern has been designated by the commissioner pursuant to section 6 of P.L.1981, c.262 (C.58:1A-6) may establish a Water Allocation Credit Exchange to facilitate the transfer of water allocation credits within the area of critical water supply concern.

(1) Any two or more adjacent or proximate counties located within any portion of a designated area of critical water supply concern may establish a Regional Water Allocation Credit Exchange to facilitate the transfer of water allocation credits within the area of critical water supply concern on a cooperative basis.

(2) Any Water Allocation Credit Exchange established in a county, by resolution of its governing body, prior to the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be vested with the authority provided herein.

(3) Any Regional Water Allocation Credit Exchange established in two or more adjacent or proximate counties, by resolution of their respective governing bodies, prior to the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be vested with the authority provided herein.

tive date of P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be vested with the authority provided herein.

b. The owner of a sending well in a designated area of critical water supply concern may transfer a water allocation credit to the owner of a receiving well requiring the additional gallonage to meet the demand for water within its service area. This transfer may occur through a direct "arms length" transaction between the well owners, or between a well owner and a local government unit, or through the auspices of a county Water Allocation Credit Exchange established for this purpose pursuant to the provisions of this section.

The transfer shall be subject to confirmation by the department. The department shall issue a determination within 30 days of receipt of a request for confirmation and shall not unreasonably withhold confirmation of the transfer unless it can be demonstrated that the transfer will result in a significant adverse impact on the designated area of critical water supply concern. Upon confirmation of the transfer, the department shall modify the water allocation permits issued for diversions from the sending and receiving wells to reflect the water allocation credits being transferred, in accordance with the provisions of section 6 of P.L.1981, c.262 (C.58:1A-6).

c. The owner of a receiving well may increase the amount of gallons of water per year pumped from that well at a level equaling the amount of the water allocation credit.

C.58:1A-7.6 Report to Governor, Legislature.

7. The department shall prepare a report to the Governor and the Legislature on the Water Allocation Credit Transfer Program and make recommendations therein concerning the implementation and effectiveness of the program. The report shall be transmitted to the Governor, the President of the Senate and the Speaker of the General Assembly no later than 24 months following the effective date of P.L.1993, c.202 (C.58:1A-7.3 et al.), and every 24 months thereafter.

8. Section 9 of P.L.1981, c.262 (C.58:1A-9) is amended to read as follows:

C.58:1A-9 Rates.

9. The Board of Regulatory Commissioners shall fix just and reasonable rates for any public water supply system subject to its jurisdiction, as may be necessary for that system to comply with

an order issued by the department or the terms and conditions of a permit issued pursuant to P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.).

9. Section 15 of P.L.1981, c.262 (C.58:1A-15) is amended to read as follows:

C.58:1A-15 Powers and duties.

15. The department may:

a. Perform any and all acts and issue such orders as are necessary to carry out the purposes and requirements of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);

b. Administer and enforce the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) and rules, regulations and orders adopted, issued or effective thereunder;

c. Present proper identification and then enter upon any land or water for the purpose of making any investigation, examination or survey contemplated by P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);

d. Subpoena and require the attendance of witnesses and the production by them of books and papers pertinent to the investigations and inquiries the department is authorized to make under P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.), and examine them and those public records as shall be required in relation thereto;

e. Order the interconnection of public water supply systems, whether in public or private ownership, whenever the department determines that the public interest requires that this interconnection be made, and require the furnishing of water by means of that system to another system, but no order shall be issued before comments have been solicited at a public hearing, notice of which has been published at least 30 days before the hearing, in one newspaper circulating generally in the area served by each involved public water supply system, called for the purpose of soliciting comments on the proposed action.

f. Order any person diverting water to improve or repair its water supply facilities so that water loss is eliminated so far as practicable, safe yield is maintained and the drinking water quality standards adopted pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.) are met;

g. Enter into agreements, contracts, or cooperative arrangements under such terms and conditions as the department deems

appropriate with other states, other State agencies, federal agencies, municipalities, counties, educational institutions, investor-owned water companies, municipal utilities authorities, or other organizations or persons;

h. Receive financial and technical assistance from the federal government and other public or private agencies;

i. Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;

j. Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);

k. Delegate those responsibilities and duties to personnel of the department as deemed appropriate for the purpose of administering the requirements of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.);

l. Combine permits issued pursuant to P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) with permits issued pursuant to any other act whatsoever whenever that action would improve the administration of those acts;

m. Evaluate and determine the adequacy of ground and surface water supplies and develop methods to protect aquifer recharge areas.

C.58:1A-15.1 Actions consistent with Pinelands regulation.

10. No action taken by the department pursuant to the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be inconsistent with the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) or the comprehensive management plan for the pinelands area adopted pursuant to section 7 of P.L.1979, c.111 (C.13:18A-8).

11. 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 al.) and P.L.1993, c.202 (C.58:1A-7.3 et al.):

a. "Commissioner" means the Commissioner of the Department of Environmental Protection and Energy or his 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 act;

c. "Department" means the Department of Environmental Protection and Energy;

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.

12. This act shall take effect immediately.

Approved July 24, 1993.

CHAPTER 203

AN ACT appropriating \$397,335 from the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, for the purpose of making a State grant, as awarded by the New Jersey Historic Trust, for a historic preservation project at Paterson City Hall.

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

1. a. There is appropriated to the New Jersey Historic Trust from the "Cultural Centers and Historic Preservation Fund" established pursuant to section 20 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, the sum of \$397,335 for the purpose of making a State grant, as awarded by the New Jersey Historic Trust, for a historic preservation project at Paterson City Hall, Passaic County, which sum shall include administrative costs of the New Jersey Historic Trust incurred in administering this act. The following project is eligible for funding with the monies appropriated pursuant to this section:

<u>COUNTY</u>	<u>PROPERTY</u> <u>NAME</u>	<u>LOCATION</u>	<u>NAME OF</u> <u>ORGANIZA-</u> <u>TION</u>	<u>GRANT</u> <u>AWARD</u>
Passaic	Paterson City Hall	Paterson	City of Paterson	\$397,335
TOTAL				\$397,335

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

2. To the extent that monies remain available after the project listed in section 1 of this act is offered funding from the "Cultural Centers and Historic Preservation Fund," the projects listed in P.L.1990, c.91, P.L.1991, c.468, P.L.1993, c.270, P.L.1993, c.271, and P.L.1993, c.272 shall be eligible for funding, including administrative costs of the New Jersey Historic Trust in administering this section, in a sequence consistent with the priority system established by the New Jersey Historic Trust, and shall require the approval of the Joint Budget Oversight Committee or its successor.

3. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1987, c.265.

4. This act shall take effect immediately.

Approved July 25, 1993.

CHAPTER 204

A SUPPLEMENT to "An act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1994 and regulating the disbursement thereof," approved _____, 1993 (P.L.1993, c. _____)(now pending as Senate Bill No. 2000 of 1993 or Assembly Bill No. 2800 of 1993).

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

1. In addition to the amounts appropriated in P.L.1993, c.155 there are appropriated such additional amounts out of the General Fund as are permitted pursuant to the following provision for the purpose specified:

STATE AID

34 DEPARTMENT OF EDUCATION

*30 Educational, Cultural and Intellectual Development**31 Direct Educational Services and Assistance--State Aid*

In addition to the amounts hereinabove, additional sums as necessary for the Department of Education to provide additional State aid to a State operated district pursuant to section 19 of P.L.1987, c.399 (C.18A:7A-52) are appropriated subject to the recommendation of the Commissioner of Education and the Director of the Division of Local Government Services and the approval of the Director of the Division of Budget and Accounting.

2. This act shall take effect immediately and if enacted after July 1, 1993 shall be retroactive to that date.

Approved July 25, 1993.

CHAPTER 205

A SUPPLEMENT to "AN ACT making appropriations for the support of the State Government and the several public purposes for

the fiscal year ending June 30, 1993 and regulating the disbursement thereof," passed June 30, 1992 (P.L.1992, c.40).

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

1. In addition to the amounts appropriated under P.L.1992, c.40, there is appropriated out of the General Fund the following sum for the purpose specified:

CAPITAL CONSTRUCTION
78 DEPARTMENT OF TRANSPORTATION
60 *Transportation Programs*
61 *State Highway Facilities*

Capital Project:

Acoustical and feasibility study, Route 208, Fair Lawn Borough, Bergen County	\$150,000

2. This act shall take effect immediately.

Approved July 26, 1993.

CHAPTER 206

AN ACT concerning the imposition of the death penalty on certain persons and amending N.J.S.2C:11-3.

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

1. N.J.S.2C:11-3 is amended to read as follows:

Murder.

2C:11-3. Murder. a. Except as provided in N.J.S.2C:11-4 criminal homicide constitutes murder when:

(1) The actor purposely causes death or serious bodily injury resulting in death; or

(2) The actor knowingly causes death or serious bodily injury resulting in death; or

(3) It is committed when the actor, acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual assault, arson, burglary, kidnapping or criminal escape, and in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants; except that in any prosecution under this subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

b. Murder is a crime of the first degree but a person convicted of murder shall be sentenced, except as provided in subsection c. of this section, by the court to a term of 30 years, during which the person shall not be eligible for parole or to a specific term of years which shall be between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole.

c. Any person convicted under subsection a.(1) or (2) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; or who, as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded or by threat or promise solicited the commission of the offense, shall be sentenced as provided hereinafter:

(1) The court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or pursuant to the provisions of subsection b. of this section.

Where the defendant has been tried by a jury, the proceeding shall be conducted by the judge who presided at the trial and before the jury which determined the defendant's guilt, except that, for good cause, the court may discharge that jury and conduct the proceeding before a jury empaneled for the purpose of the proceeding. Where the defendant has entered a plea of guilty or has been tried without a jury, the proceeding shall be conducted by the judge who accepted the defendant's plea or who determined the defendant's guilt and before a jury empaneled for the purpose of the proceeding. On motion of the defendant and with consent of the prosecuting attorney the court may conduct a proceeding without a jury. Nothing in this subsection shall be construed to prevent the participation of an alternate juror in the sentencing proceeding if one of the jurors who rendered the guilty verdict becomes ill or is otherwise unable to proceed before or during the sentencing proceeding.

(2) (a) At the proceeding, the State shall have the burden of establishing beyond a reasonable doubt the existence of any aggravating factors set forth in paragraph (4) of this subsection. The defendant shall have the burden of producing evidence of the existence of any mitigating factors set forth in paragraph (5) of this subsection but shall not have a burden with regard to the establishment of a mitigating factor.

(b) The admissibility of evidence offered by the State to establish any of the aggravating factors shall be governed by the rules governing the admission of evidence at criminal trials. The defendant may offer, without regard to the rules governing the admission of evidence at criminal trials, reliable evidence relevant to any of the mitigating factors. If the defendant produces evidence in mitigation which would not be admissible under the rules governing the admission of evidence at criminal trials, the State may rebut that evidence without regard to the rules governing the admission of evidence at criminal trials.

(c) Evidence admitted at the trial, which is relevant to the aggravating and mitigating factors set forth in paragraphs (4) and (5) of this subsection, shall be considered without the necessity of reintroducing that evidence at the sentencing proceeding; provided that the fact finder at the sentencing proceeding was present as either the fact finder or the judge at the trial.

(d) The State and the defendant shall be permitted to rebut any evidence presented by the other party at the sentencing proceed-

ing and to present argument as to the adequacy of the evidence to establish the existence of any aggravating or mitigating factor.

(e) Prior to the commencement of the sentencing proceeding, or at such time as he has knowledge of the existence of an aggravating factor, the prosecuting attorney shall give notice to the defendant of the aggravating factors which he intends to prove in the proceeding.

(f) Evidence offered by the State with regard to the establishment of a prior homicide conviction pursuant to paragraph (4)(a) of this subsection may include the identity and age of the victim, the manner of death and the relationship, if any, of the victim to the defendant.

(3) The jury or, if there is no jury, the court shall return a special verdict setting forth in writing the existence or nonexistence of each of the aggravating and mitigating factors set forth in paragraphs (4) and (5) of this subsection. If any aggravating factor is found to exist, the verdict shall also state whether it outweighs beyond a reasonable doubt any one or more mitigating factors.

(a) If the jury or the court finds that any aggravating factors exist and that all of the aggravating factors outweigh beyond a reasonable doubt all of the mitigating factors, the court shall sentence the defendant to death.

(b) If the jury or the court finds that no aggravating factors exist, or that all of the aggravating factors which exist do not outweigh all of the mitigating factors, the court shall sentence the defendant pursuant to subsection b.

(c) If the jury is unable to reach a unanimous verdict, the court shall sentence the defendant pursuant to subsection b.

(4) The aggravating factors which may be found by the jury or the court are:

(a) The defendant has been convicted, at any time, of another murder. For purposes of this section, a conviction shall be deemed final when sentence is imposed and may be used as an aggravating factor regardless of whether it is on appeal;

(b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;

(c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;

(d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;

(e) The defendant procured the commission of the offense by payment or promise of payment of anything of pecuniary value;

(f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by the defendant or another;

(g) The offense was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary or kidnapping;

(h) The defendant murdered a public servant, as defined in N.J.S.2C:27-1, while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;

(i) The defendant: (i) as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, committed, commanded or by threat or promise solicited the commission of the offense or (ii) committed the offense at the direction of a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated in N.J.S.2C:35-3; or

(j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2.

(5) The mitigating factors which may be found by the jury or the court are:

(a) The defendant was under the influence of extreme mental or emotional disturbance insufficient to constitute a defense to prosecution;

(b) The victim solicited, participated in or consented to the conduct which resulted in his death;

(c) The age of the defendant at the time of the murder;

(d) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was significantly impaired as the result of mental disease or defect or intoxication, but not to a degree sufficient to constitute a defense to prosecution;

(e) The defendant was under unusual and substantial duress insufficient to constitute a defense to prosecution;

(f) The defendant has no significant history of prior criminal activity;

(g) The defendant rendered substantial assistance to the State in the prosecution of another person for the crime of murder; or

(h) Any other factor which is relevant to the defendant's character or record or to the circumstances of the offense.

d. The sentencing proceeding set forth in subsection c. of this section shall not be waived by the prosecuting attorney.

e. Every judgment of conviction which results in a sentence of death under this section shall be appealed, pursuant to the Rules

of Court, to the Supreme Court. Upon the request of the defendant, the Supreme Court shall also determine whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Proportionality review under this section shall be limited to a comparison of similar cases in which a sentence of death has been imposed under subsection c. of this section. In any instance in which the defendant fails, or refuses to appeal, the appeal shall be taken by the Office of the Public Defender or other counsel appointed by the Supreme Court for that purpose.

f. Prior to the jury's sentencing deliberations, the trial court shall inform the jury of the sentences which may be imposed pursuant to subsection b. of this section on the defendant if the defendant is not sentenced to death. The jury shall also be informed that a failure to reach a unanimous verdict shall result in sentencing by the court pursuant to subsection b.

g. A juvenile who has been tried as an adult and convicted of murder shall not be sentenced pursuant to the provisions of subsection c. but shall be sentenced pursuant to the provisions of subsection b. of this section.

h. In a sentencing proceeding conducted pursuant to this section, no evidence shall be admissible concerning the method or manner of execution which would be imposed on a defendant sentenced to death.

i. For purposes of this section the term "homicidal act" shall mean conduct that causes death or serious bodily injury resulting in death.

2. This act shall take effect immediately.

Approved July 28, 1993.

CHAPTER 207

AN ACT to exempt certain municipal housing loan programs from the licensure requirements of the "Secondary Mortgage Loan Act," and amending P.L.1970, c.205.

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

1. Section 3 of P.L.1970, c.205 (C.17:11A-36) is amended to read as follows:

C.17:11A-36 License, required; exceptions.

3. a. No person shall engage in the secondary mortgage loan business in this State unless such person shall first obtain a license under this act. For the purpose of this act, a person is deemed to be engaged in the secondary mortgage loan business in this State if: (a) such person advertises, causes to be advertised, solicits, negotiates, offers to make or makes a secondary mortgage loan in this State, whether directly or by any person acting for his benefit; or (b) such person becomes the subsequent holder of a promissory note or mortgage, indenture or any other similar instrument or document received in connection with a secondary mortgage loan. A real estate broker licensed pursuant to the provisions of the law of this State or an attorney authorized to practice law in this State shall not be required to obtain a license to negotiate a secondary mortgage loan in the normal course of the business of a real estate broker or attorney.

b. No corporation, partnership, association or other entity, other than an individual, shall obtain a license unless at least one officer, partner, member or other principal is licensed under the "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 et seq.).

c. Any person who makes two or fewer secondary mortgage loans in this State during any calendar year which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than said interest, shall not be required to obtain a license under the provisions of P.L.1970, c.205 (C.17:11A-34 et seq.).

d. Any employer who provides secondary mortgage loans solely to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than said interest, shall not be required to obtain a license under the provisions of P.L.1970, c.205 (C.17:11A-34 et seq.).

e. A municipality which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act,"

P.L.1985, c.222 (C.52:27D-301 et al.), or in fulfillment of a regional contribution agreement with a municipality that has received such certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated, shall not be required to obtain a license under the provisions of P.L.1970, c.205 (C.17:11A-34 et seq.) in order to make such loans or advances; nor shall any officer or employee of such a municipality, or of any agency or instrumentality thereof, be required individually to so obtain a license.

2. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 208

AN ACT concerning the termination of leases by handicapped tenants and amending P.L.1985, c.317.

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

1. Section 5 of P.L.1985, c.317 (C.46:8-9.2) is amended to read as follows:

C.46:8-9.2 Termination on disability.

5. A lease for a term of one or more years of a property that has been leased and used by the lessee solely for the purpose of providing a dwelling place for himself, or himself and his family, may be terminated prior to the expiration date thereof if the lessee or his spouse, or both, suffer a disabling illness or accident, upon notice duly given by the lessee or his spouse, on a form to be provided by the Director of the Division of Housing and Development in the Department of Community Affairs, which form shall include:

- a. certification of a treating physician that the lessee or spouse is unable to continue to engage in gainful employment;
- b. proof of

loss of income; and c. proof that any pension, insurance or other subsidy to which the lessee or his spouse is entitled is insufficient to supplement the income of the lessee or his spouse so that the rent on the property in question can be paid and that the income is necessary for payment of the rent.

A lease may be terminated at a dwelling place that is not handicapped accessible by a lessee or a member of his household who suffers a disabling illness or accident, provided that notice is given to the lessor by the lessee or his spouse or other adult family member, on a form to be provided by the director which shall include: (a) certification from a licensed physician that the lessee or a member of his household is handicapped and that the handicap is likely not to be of a temporary nature, and (b) a statement that the lessor has been asked to make the dwelling unit accessible to the lessee or to a member of his household at the lessor's expense and was unable or unwilling to do so. For purposes of this section, "handicapped" shall mean any person who would be considered a handicapped person pursuant to the definition in section 1 of P.L.1949, c.280 (C.39:4-204).

The termination shall take effect on the fortieth day following the receipt by the lessor of the written notice, and the rent shall be paid up to the time of termination, at which time the lease shall cease and come to an end. The property shall be vacated and possession shall be turned over to the lessor at least five working days prior to the fortieth day following receipt by the lessor of written notice.

2. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 209

AN ACT creating the New Jersey Railroad and Transportation Museum Commission, establishing the Railroad and Transportation Museum Commission Expenses Fund and the Railroad and Transportation Museum Fund, and repealing P.L.1987, c.41, P.L.1988, c.5, and P.L.1990, c.58, and making an appropriation.

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

C.52:16A-43 Findings, declarations; authority of department.

1. The Legislature finds and declares that:

a. The New Jersey Railroad and Transportation Museum Study Commission was created under P.L.1987, c.41, continued under P.L.1988, c.5, and reconstituted under P.L.1990, c.58, for the purpose of investigating the feasibility of establishing a railroad and transportation museum in New Jersey; including in its study such issues as the possible location of the museum, the costs associated with the creation and operation of the museum, and the potential sources and types of financial support required for the museum;

b. In its Interim Report, published in February 1988, the study commission documented the public interest in, the historical need for, and the financial viability of, a railroad and transportation museum in this State;

c. Since then, the study commission has devoted many hours to meetings, on-site inspections, public hearings, research and planning, to ensure that the State's railroad and transportation heritage will be preserved in a well-planned, financially sound manner, and that there will be enthusiastic public support for the museum;

d. The continuity of this planning process must extend beyond the September 30, 1991 expiration date of the legislation authorizing the study commission, if the museum is to succeed, and the extensive preparatory work of the study commission, a major contribution to the museum project, should be expanded upon, so as not to lose the momentum of public interest in the project, and to take advantage of the opportunities now available to obtain equipment, artifacts and other memorabilia, railroad rights-of-way and other real properties, and the sources of funding for the project;

e. Therefore, it is only appropriate that the Legislature create a new long-term commission, to continue the work of the study commission, and to take further preparatory actions toward creation of the museum. At this time the Department of State is deemed the appropriate authority to establish the museum, pending any final decision made in the future, and for this reason the Department of State is authorized to receive funds for the proposed museum and to take other appropriate preparatory and transitional action.

C.52:16A-44 New Jersey Railroad and Transportation Museum Commission, created.

2. There is created, in but not of the Department of State, a commission to be known as the New Jersey Railroad and Transportation Museum Commission, with a membership of 16. The commission shall consist of:

a. Two members of the Senate, to be appointed by the President thereof, who shall not be of the same political party, and two members of the General Assembly, to be appointed by the Speaker thereof, who shall not be of the same political party. A legislative member shall serve only as long as he or she is a member of the House which made the original appointment.

b. The Commissioner of Transportation, or his designee, the Commissioner of Commerce and Economic Development, or his designee, the Commissioner of Environmental Protection and Energy, or his designee, the Secretary of State, or his designee, the State Treasurer, or his designee, and the Executive Director of the New Jersey Transit Corporation or his designee.

c. Six public members, to be appointed by the Governor, with the advice and consent of the Senate, one of whom shall be chosen from the United Railroad Historical Society, one of whom shall be chosen from the Friends of the New Jersey Railroad and Transportation Museum, and the rest of whom shall be chosen from among persons who are affiliated with railroad or transportation historical preservation, exhibition or tourism organizations in New Jersey, or from among persons who have knowledge of, individual experience with, or demonstrated interest in, New Jersey railroad or transportation history, preservation, exhibition or tourism. If a public member is chosen from the United Railroad Historical Society, the Friends of the New Jersey Railroad and Transportation Museum, or a railroad or transportation historical preservation, exhibition or tourism organization, the public member shall have the power to appoint a designee from the membership of the organization. If one of these organizations goes out of existence, the position on the commission shall be considered vacant, and the position may be filled, for the unexpired term only, from among persons who are affiliated with other railroad or transportation historical preservation, exhibition or tourism organizations in New Jersey, or from among persons who have knowledge of, individual experience with, or demonstrated interest in, New Jersey railroad or transportation history, preservation, exhibition or tourism. The public members shall have terms of three years, and shall be eligible for reappointment to the commission; except that, of those first appointed, two of the public members shall have terms of three years, two shall have terms of two years and two shall have terms of one year, and all of the members first appointed shall be eligible for reappointment.

All appointments shall be made within 60 days of the effective date of this act. For purposes of continuity, and to the extent practicable and feasible, the first appointments to the commission shall include the legislative, ex officio, and public members of the New Jersey Railroad and Transportation Museum Study Commission last serving on that study commission; except that a member of the study commission shall have the right to decline appointment to the new commission. Vacancies in the membership of the commission shall be filled, for the unexpired term only, in the manner described in subsections a. through c. of this section, and within 60 days of the vacancy. Members of the commission shall serve without compensation for performing their duties as members, but the commission may, within the limits of funds appropriated or otherwise made available therefor, reimburse members for the actual expenses necessarily incurred in the performance of their duties.

C.52:16A-45 Organization, selection of chairman, secretary.

3. The commission shall organize as soon as possible after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the commission.

C.52:16A-46 Commission duties.

4. The commission may:

- a. Make recommendations to the Governor, the Legislature and the Department of State concerning the general nature and scope of a transportation and railroad museum, including the presentation and examination of various alternative sites for the museum. The commission shall make no recommendations or decisions concerning a choice of a preliminary or final site for the museum unless it has developed a master plan therefor, provided, however, that the Legislature has by law authorized the development of such a plan;
- b. Make recommendations to the Governor, the Legislature and the Department of State concerning the selection of architectural and interior design plans for the railroad and transportation museum;
- c. Make recommendations to the Governor, the Legislature and the Department of State concerning the selection, acquisition, movement, storage and security of railroad and transportation related equipment, memorabilia, books, papers, and other documents;
- d. Raise funds, through direct solicitation or other fund raising events, alone, or in conjunction with nonprofit railroad or transportation groups in this State, and accept gifts, donations, devises and bequests, for the purposes of a State railroad and transportation museum and to defray the administrative expenses of the commission;

e. Work with various nonprofit railroad and transportation groups around the State, for purposes of obtaining funding and enhancing public interest in the museum project;

f. Continue any studies or projects begun by the New Jersey Railroad and Transportation Museum Study Commission, and prepare any new studies or projects related to the creation and development of a railroad and transportation museum in this State.

C.52:16A:47 Available assistance.

5. The commission shall be entitled to call to its assistance and avail itself of the services and assistance of such officials and employees of the State and its political subdivisions and their departments, boards, bureaus, commissions, authorities and agencies as it may require and as may be available to it for its purposes; and to employ the professional staff, including an executive director, and the stenographic and clerical assistants, and incur the traveling and other miscellaneous expenses, including the maintenance of office space on State property, as it may deem necessary, in order to perform its duties, and may expend any funds as may be appropriated or otherwise made available to it for its purposes. The professional staff, and the stenographic and clerical assistants, may choose to serve the commission on a volunteer basis, without pay. To the extent practicable and feasible, the commission shall be entitled to use, free of charge, or at a minimal rental fee, State property for office space.

C.52:16A-48 Meetings; report.

6. The commission may meet and hold hearings at any place or places as it shall designate during the sessions or recesses of the Legislature. The commission shall report a summary of its activities and its findings, conclusions and recommendations to the Governor, the Legislature, and the Department of State on an annual basis, not later than March 1 of each year of the commission's life, accompanying them with any legislative bills which it may desire to recommend for adoption by the Legislature.

C.52:16A-49 "Railroad and Transportation Museum Commission Expenses Fund," established.

7. The commission shall establish a fund for its administrative expenses, to be held by the State Treasurer, which shall be called the "Railroad and Transportation Museum Commission Expenses Fund," which shall be kept separate and apart from the Railroad and Transportation Museum Fund established by section 9 of this act. The moneys in the fund shall be invested and reinvested as

provided by law for other funds in the custody of the State Treasurer. Moneys may be disbursed from the fund upon the vote of the commission and a record of receipts and expenditures shall be maintained by the commission with an annual record thereof being transmitted to the State Treasurer where it shall be subject to public inspection during regular business hours.

C.52:16A-50 Acquisition of other funds and related materials.

8. The Department of State is authorized to acquire, through purchase, transfer, condemnation, devise, bequest, donation, gift or otherwise, in the name of the State, for purposes of a State railroad and transportation museum, and subject to the availability of appropriations or other funds as may be necessary therefor, any real property, including, but not limited to land, buildings, improvements, and railroad rights-of-way. The department may use moneys from the Railroad and Transportation Museum Fund to effectuate its responsibilities under this section. Additionally, the Department of State is authorized to acquire, through purchase, transfer, devise, donation, gift or otherwise, railroad and transportation related equipment, memorabilia, books, papers, and other documents. The Department of State also is authorized to provide for the selecting, moving, securing and storage of any such acquisitions by the New Jersey Transit Corporation or by any department or agency which the Department of State shall deem appropriate.

C.52:16A-51 "Railroad and Transportation Museum Fund," established.

9. There is established in the Department of State a fund to be known as the "Railroad and Transportation Museum Fund." The fund shall be credited with moneys received under subsection d. of section 4 of this act, and with any other moneys and appropriations obtained by the department for railroad and transportation museum purposes. All interest earned on the investment moneys in the fund shall be credited to the fund. Appropriations of moneys made by the Legislature to the commission or otherwise received by the commission for its administrative purposes shall be credited to the fund established under section 7 of this act until the expiration date of the commission under section 13 of this act. The moneys in the fund established by this section shall be administered by the Secretary of State, to be held thereby in the fund until appropriated by law. Moneys from the fund shall be used only for the purposes of a State railroad and transportation museum, including, but not limited to, the costs related to the establishment of the museum; the acquisition of a site for the

museum; the selection and preparation of the architectural and interior design plans for the museum; and the acquisition, storage and security for railroad and transportation related equipment, memorabilia, books, papers and other documents for the museum. Not later than one year after the effective date of this act, and quarterly thereafter, the Secretary of State shall certify to the Legislature, the Department of the Treasury, and the commission until the date of its expiration under section 13 of this act, the total amount of moneys in the fund.

Moneys received by the fund to be used for an expressly specified purpose, such as, but not limited to, moneys expressly donated for the purchase of a certain type of railroad or transportation equipment for the railroad and transportation museum, shall be held in a restricted account within the fund. Interest earned on investment moneys in each restricted account shall be credited to the fund. The moneys in the fund shall be invested and reinvested in the same manner that trust funds in the custody of the State Treasurer are invested and reinvested.

C.52:16A-52 Lapsing funds.

10. Upon expiration of the New Jersey Railroad and Transportation Museum Commission, in accordance with section 13 of this act, all moneys remaining in the fund established under section 7 of this act shall lapse to the Railroad and Transportation Museum Fund.

Repealer.

11. P.L.1987, c.41, P.L.1988, c.5 and P.L.1990, c.58 are repealed.

12. There is appropriated the sum of \$5,000 to the commission for its administrative expenses, to be deposited in the fund established under section 7 of this act.

13. This act shall take effect immediately and, except for sections 8, 9 and 10 hereof, this act shall expire on September 30, 2002.

Approved July 30, 1993.

CHAPTER 210

AN ACT providing for the creation of limited liability companies and supplementing Title 42 of the Revised Statutes.

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

C.42:2B-1 Short title.

1. This act shall be known and may be cited as the “New Jersey Limited Liability Company Act.”

C.42:2B-2 Definitions.

2. As used in this act unless the context otherwise requires:

“Bankruptcy” means an event that causes a person to cease to be a member as provided in section 24 of this act.

“Certificate of formation” means the certificate referred to in section 11 of this act, and the certificate as amended.

“Contribution” means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member; provided however, that services rendered and obligations to perform services are contributions only to the extent designated as contributions in the operating agreement.

“Foreign limited liability company” means a limited liability company or a registered limited liability partnership formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

“Limited liability company” and “domestic limited liability company” means a limited liability company formed under the laws of this State and having two or more members.

“Limited liability company interest” means a member’s share of the profits and losses of a limited liability company and a member’s right to receive distributions of the limited liability company’s assets.

“Liquidating trustee” means a person carrying out the winding up of a limited liability company.

“Manager” means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, an operating agreement or similar instrument under which the limited liability company is formed.

“Member” means a person who has been admitted to a limited liability company as a member as provided in section 21 of this act or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other

foreign jurisdiction under which the foreign limited liability company is organized.

“Operating agreement” means a written agreement of the members as to the affairs of a limited liability company and the conduct of its business.

“Person” means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

“State” means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than this State.

C.42:2B-3 Name of limited liability company.

3. The name of each limited liability company as set forth in its certificate of formation:

a. Shall contain the words “Limited Liability Company” or the abbreviation “L.L.C.”;

b. May contain the name of a member or manager;

c. Must be such as to distinguish it upon the records in the office of the Secretary of State from the name of any corporation, limited partnership, business trust or limited liability company reserved, registered, formed or organized under the laws of this State or qualified to do business or registered as a foreign corporation, foreign limited partnership or foreign limited liability company in this State; provided, however, that a limited liability company may register under any name which does not distinguish it upon the records in the office of the Secretary of State from the name of any domestic or foreign corporation, limited partnership, business trust or limited liability company reserved, registered, formed or organized under the laws of this State with the written consent of the other corporation, limited partnership, business trust or limited liability company, which written consent shall be filed with the Secretary of State; and

d. Shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this State, unless the restrictions have been complied with.

C.42:2B-4 Conditions for use of alternate name; certificate of registration.

4. a. No domestic limited liability company or foreign limited liability company which conducts activities in this State shall

conduct any of those activities using an alternate name, including an abbreviation of its name or an acronym, unless:

(1) It also uses its actual name in the transaction of any of its activities in a manner that is not deceptive as to its actual identity; or

(2) It has first registered the alternate name as provided in subsection b. of this section.

b. Any limited liability company may adopt and use any alternate name, including any name which would be unavailable as the name of a domestic or foreign limited liability company because of the prohibitions of subsection c. of section 3, but not including any name not permitted as a limited liability company name by subsection a. or d. of section 3, by filing an original and a copy of a certificate of registration of alternate name with the Secretary of State executed on behalf of the limited liability company. The certificate shall set forth:

(1) The name, jurisdiction and date of establishment of the limited liability company;

(2) The alternate name;

(3) A brief statement of the character or nature of the particular activities to be conducted using the alternate name;

(4) That the limited liability company intends to use the alternate name in this State;

(5) That the limited liability company has not previously used the alternate name in this State in violation of this section or, if it has, the month and year in which it commenced the use.

c. The registration shall be effective for five years from the date of filing and may be renewed successively for additional five-year periods by filing an original and a copy of the certificate of renewal executed on behalf of the limited liability company anytime within 90 days prior to, but not later than, the date of expiration of the registration. The certificate of renewal shall set forth the information required in paragraphs (1) through (4) of subsection b. of this section, the date of the certificate of registration then in effect and that the limited liability company is continuing to use the alternate name.

d. This section shall not:

(1) Grant to the registrant of an alternate name any right in the name as against any prior or subsequent use of the name, regardless of whether used as a trademark, trade name, business name or corporate name; or

(2) Interfere with the power of any court to enjoin the use of the name on the basis of the law of unfair competition or on any other

basis except the identity or similarity of the alternate name to any corporate, limited partnership or limited liability company name.

e. A limited liability company which has used an alternate name in this State contrary to the provisions of this section shall, upon filing a certificate of registration of alternate name or an untimely certificate of renewal, pay to the Secretary of State the filing fee prescribed for the certificate plus an additional filing fee equal to the full amount of the regular filing fee multiplied by the number of years it has been using the alternate name in violation of this section. For the purpose of this subsection, any part of a year shall be considered a full year.

f. The failure of a limited liability company to file a certificate of registration or renewal of alternate name shall not impair the validity of any contract or act of the limited liability company and shall not prevent the limited liability company from defending any action or proceedings in any court of this State, but the limited liability company shall not maintain any action or proceeding in any court of this State arising out of a contract or act in which it used the alternate name until it has filed the applicable certificate.

g. (1) A limited liability company which files a certificate of registration of alternate name which contains a false statement or omission regarding the date it first used an alternate name in this State shall, if the false statement or omission reduces the amount of the additional fee it paid or should have paid as provided in subsection e. of this section, forfeit to the State a penalty of not less than \$200 nor more than \$500.

(2) A limited liability company which should have filed a certificate of registration or renewal of alternate name and fails to do so within 60 days after being notified of its obligation to do so by certified or registered mail by the Secretary of State, by any other governmental officer, or by any person aggrieved by its failure to do so, shall forfeit to the State a penalty of not less than \$200 nor more than \$500.

(3) A penalty imposed under this section shall be recovered with costs in an action brought by the Attorney General. The court may proceed on the action in a summary manner.

C.42:2B-5 Exclusive use, reservation of specified name.

5. a. The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited liability company under this act and to adopt that name;

(2) Any domestic limited liability company or any foreign limited liability company registered in this State which, in either case, proposes to change its name;

(3) Any foreign limited liability company intending to register in this State and adopt that name; and

(4) Any person intending to organize a foreign limited liability company and intending to have it register in this State and adopt that name.

b. The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120 day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Any duplicate copy filed with the Secretary of State as required by this subsection shall be returned by the Secretary of State to the person who filed it or his representative with a notation thereon of the action taken with respect to the original copy thereof by the Secretary of State.

C.42:2B-6 Company office; agent.

6. a. Each domestic and foreign limited liability company shall have and maintain in this State:

(1) A registered office, which may but need not be a place of its business in this State; and

(2) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of this State whose business office is identical with the limited liability company's registered office, or a domestic corporation,

or a foreign corporation authorized to do business in this State having a business office identical with such registered office, or the limited liability company itself.

b. (1) A registered agent may (with prior notice to the limited liability company for which it is the registered agent), change the address of the registered office of any domestic or foreign limited liability company for which the registered agent is registered agent to another address in this State by filing in the office of the Secretary of State a certificate, executed by the registered agent, setting forth the names of each limited liability company, and the address at which the registered agent has maintained the registered office for each limited liability company, and further certifying to the new address to which the registered office will be changed on a given day, and at which new address the registered agent will thereafter maintain the registered office for each limited liability company recited in the certificate. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under his hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office in this State of each limited liability company recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate.

(2) In the event of a change of name of any person acting as a registered agent of a limited liability company, the registered agent shall file in the office of the Secretary of State a certificate, executed by the registered agent, setting forth the new name of the registered agent, the name of the registered agent before it was changed, the name of each limited liability company represented by the registered agent, and the address at which the registered agent has maintained the registered office for each limited liability company. Upon the filing of the certificate, the Secretary of State shall furnish to the registered agent a certified copy of the certificate under his hand and seal of office.

(3) Filing a certificate under this section shall be deemed to be an amendment of the certificate of formation of each limited liability company affected thereby and no limited liability company shall be required to take any further action with respect thereto, to amend its certificate of formation under this act.

C.42:2B-7 Agent resignation; successor.

7. a. The registered agent of a domestic limited liability company or a foreign limited liability company authorized to transact business in this State may resign by complying with the provisions of this section.

b. The registered agent of a foreign or domestic limited liability company may resign and appoint a successor registered agent by filing a certificate in the office of the Secretary of State, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by the affected limited liability company ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of each limited liability company which has ratified and approved the substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each limited liability company's registered office in this State. The Secretary of State shall furnish to the successor registered agent upon request a certified copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the certificate of formation of the limited liability company affected thereby and the limited liability company shall not be required to take any further action with respect thereto, to amend its certificate of formation under this act.

c. The registered agent of a limited liability company may resign without appointing a successor registered agent by complying with the following provisions:

(1) The registered agent, or, in the case of a registered agent who is deceased or has been declared incompetent by a court of competent jurisdiction, his legal representative, shall serve a notice of resignation by certified mail, return receipt requested, upon the limited liability company at the address last known to the agent, and shall make an affidavit of such service. If service cannot be made, the affidavit shall so state, and shall state briefly why service cannot be made. The affidavit, together with a copy of notice of resignation, shall be filed in the office of the Secretary of State.

(2) The resignation shall become effective 30 days after filing the affidavit of service in the office of the Secretary of State or upon the designation by the limited liability company of a new registered agent pursuant to this act, whichever is earlier. If the limited liability company fails to designate a new registered agent within the 30 day period, the limited liability company shall thereafter be deemed to have no registered agent or registered office in this State, until the limited liability company files a certificate of change of address of registered office and registered agent indicating the new registered office and registered agent.

(3) If any certificate of change replacing a resigned agent is not filed, the limited liability company shall, after written demand therefor by the Secretary of State, forfeit to the State a penalty of \$200 for each year or part thereof until an agent is appointed. The Secretary of State may issue a certificate to the Clerk of the Superior Court that the limited liability company is indebted for the payment of this penalty. This certificate shall be entered by the Clerk as a judgment docketed in the Superior Court, and shall have the same form as a docketed judgment.

(4) If a certificate of change replacing a resigned agent is not filed within two years from the effective date of the resignation, the certificate of formation of the limited liability company shall remain filed with the office of the Secretary of State but be transferred to an inactive list. A limited liability company whose certificate has been transferred to the inactive list shall remain a limited liability company formed under this act but no name reservations, transfers of reserved names or certificates of amendment may be filed until the limited liability company regains active status by making all required filings and payments. The transfer of the certificate of formation of a limited liability company to the inactive list shall have no effect on the liability of a member of a limited liability company.

C.42:2B-8 Purpose of limited liability company; powers.

8. a. A limited liability company may carry on any lawful business, purpose or activity.

b. A limited liability company shall possess and may exercise all the powers and privileges granted by this act or by any other law or by its operating agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the limited liability company.

C.42:2B-9 Members', managers' rights, obligations.

9. Except as otherwise provided in an operating agreement, a member or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager.

C.42:2B-10 Indemnification powers.

10. Subject to such standards and restrictions, if any, as are set forth in its operating agreement, a limited liability company may,

and shall have the power to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

C.42:2B-11 Certificate of formation; filing.

11. a. In order to form a limited liability company, one or more authorized persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the Secretary of State and set forth:

- (1) The name of the limited liability company;
- (2) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 6 of this act;
- (3) That the limited liability company has two or more members;
- (4) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve; and
- (5) Any other matters the members determine to include therein.

b. A limited liability company is formed at the time of the filing of the initial certificate of formation in the office of the Secretary of State or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this act shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation.

C.42:2B-12 Certificate of correction; filing.

12. If any instrument filed with the Secretary of State under any provision of this act is an inaccurate record of the limited liability company action therein referred to, or was defectively or erroneously executed, the instrument may be corrected by filing with the Secretary of State a certificate of correction executed by an authorized person. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the correction. The instrument so corrected shall be deemed to have been effective in its corrected form as of its original filing date except as to persons who actually relied in good faith upon the inaccurate portion of the certificate and who are adversely affected by the correction. As to these persons, the correction shall be effective as of the effective date of filing of the certificate of correction. Such filing shall only be made if the Secretary of State consents to the filing.

C.42:2B-13 Amending a certificate of formation.

13. a. A certificate of formation is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall set forth:

- (1) The name of the limited liability company; and
- (2) The amendment to the certificate of formation.

b. A manager or, if there is no manager, any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.

c. A certificate of formation may be amended at any time for any other proper purpose.

d. Unless a later effective date (which shall be a date certain not later than 30 days after the date of filing) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Secretary of State.

C.42:2B-14 Cancellation of a certificate of formation.

14. a. A certificate of formation shall be cancelled upon the dissolution and the completion of winding up of a limited liability company, or at any other time there are fewer than two members, or upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation.

b. A certificate of cancellation shall be filed in the office of the Secretary of State to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company or at any other time there are not two members and shall set forth:

- (1) The name of the limited liability company;
- (2) The date of filing of its certificate of formation;
- (3) The reason for filing the certificate of cancellation;
- (4) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) Any other information the person filing the certificate of cancellation determines.

C.42:2B-15 Execution of certificates.

15. a. Each certificate required by this act to be filed in the office of the Secretary of State shall be executed by one or more authorized persons.

b. Unless otherwise provided in an operating agreement, any person may sign any certificate or amendment thereof or enter into an operating agreement or amendment thereof by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into an operating agreement or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged, and need not be filed in the office of the Secretary of State, but if in writing, must be retained by the limited liability company.

c. The execution of a certificate by an authorized person constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the authorized person's knowledge and belief, the facts stated therein are true.

C.42:2B-16 Action to compel execution of certificate, agreement.

16. a. If a person required to execute a certificate required by this act fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Superior Court to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate.

b. If a person required to execute an operating agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Superior Court to direct the execution of the operating agreement or amendment thereof. If the court finds that the operating agreement or amendment thereof should be executed and that any person required to execute the operating agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

C.42:2B-17 Filing of certificates; effectiveness.

17. a. The original signed copy of the certificate of formation and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation), and of any certificate of merger or consolidation and of any restated certificate shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Any signature on any certificate authorized to be filed in the office of the Secretary of State under any provision of this act may be a facsimile. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall:

(1) Certify that the certificate of formation, the certificate of amendment, the certificate of cancellation (or of any judicial decree of amendment or cancellation), the certificate of merger or consolidation or the restated certificate has been filed in his office by endorsing upon the original certificate the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed certificate; and

(3) Prepare and return to the person who filed it or his representative a copy of the original signed instrument, similarly endorsed, and shall certify such copy as a true copy of the original signed instrument.

b. Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the Secretary of State, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or a certificate of merger or consolidation which acts as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of a certificate of merger or consolidation which acts as a certificate of cancellation, the certificate of formation is cancelled.

C.42:2B-18 Certificate of formation serves as notice.

18. A certificate of formation filed in the office of the Secretary of State is notice that the entity formed in connection with the filing of the certificate of formation is a limited liability company formed under the laws of this State and is notice of all other facts set forth therein which are required or permitted to be set forth in a certificate of formation by paragraphs (1) and (2) of subsection a. of section 11 of this act.

C.42:2B-19 Restated certificate of formation.

19. a. A limited liability company may, at any time, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having previously been filed in the office of the Secretary of State one or more certificates or other instruments pursuant to this act and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

b. If a restated certificate of formation merely restates and integrates but does not further amend the initial certificate of formation, as previously amended or supplemented by any instrument that was executed and filed pursuant to this act, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by an authorized person and filed as provided in section 17 of this act in the office of the Secretary of State. If a restated certificate restates and integrates and also further amends in any respect the certificate of formation, as previously amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one authorized person, and filed as provided in section 17 of this act in the office of the Secretary of State.

c. A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the future effective date (which shall be a date certain not more than 30 days after the date of filing) of the restated certificate if it is not to be effective upon the filing of the restated certificate. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation and there is no discrepancy between the existing certificate of formation and the restated certificate, it shall state that fact as well.

d. Upon the filing of a restated certificate of formation with the Secretary of State, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as amended or supplemented, shall be superseded; the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

e. Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this act, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

C.42:2B-20 "Other business entity" defined; merger; consolidation.

20. a. As used in this section, "other business entity" means a corporation, or a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general or limited), and a foreign limited liability company, but excluding a domestic limited liability company.

b. Pursuant to an agreement of merger or consolidation, a domestic limited liability company may merge or consolidate with or into one or more domestic limited liability companies or other business entities formed or organized under the laws of this State or any other state or the United States or any foreign country or other foreign jurisdiction, with such domestic limited liability company or other business entity as the agreement shall provide being the surviving or resulting domestic limited liability company or other business entity. Unless otherwise provided in the operating agreement, a merger or consolidation shall be approved by the members of each domestic limited liability company which is to merge or consolidate or, if there is more than one class or group of members, then by each class or group of members who under the provisions of the operating agreement are entitled to vote, in either case, by members who own more than 50 percent (unless a higher percentage is specified in the operating agreement) of the then current percentage or other interest in the profits of the domestic limited liability company owned by all of the members or by the members in each class or group, as appropriate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a domestic limited liability company or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting domestic limited liability company or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a domestic limited liability company or other business entity which is not the surviving or resulting limited liability company or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

c. If a domestic limited liability company merges or consolidates under this section, the domestic limited liability company or

other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the domestic limited liability companies or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting domestic limited liability company or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting domestic limited liability company or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting domestic limited liability company or other business entity, on request and without cost, to any member of any domestic limited liability company or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a domestic limited liability company, or a corporation or limited partnership organized under the laws of this State, a statement that such surviving or resulting other business entity agrees that it may be served with process in this State in any action, suit or proceeding for the enforcement of any obligation of any domestic limited liability company which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State.

d. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation.

e. A certificate of merger or consolidation shall act as a certificate of cancellation for a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation.

f. An agreement of merger or consolidation approved in accordance with subsection b. of this section may (1) effect any amendment to the operating agreement or (2) effect the adoption of a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection shall be effective at the time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of any constituent limited liability company to the merger or consolidation (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the operating agreement of the surviving or resulting limited liability company.

g. When any merger or consolidation becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges and powers of each of the domestic limited liability companies and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those domestic limited liability companies and other business entities, as well as all other things and causes of action belonging to each of those domestic limited liability companies and other business entities, shall be vested in the surviving or resulting domestic limited liability company or other business entity, and shall thereafter be the property of the surviving or resulting domestic limited liability company or other business entity as they were of each of the domestic limited liability companies and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this State, in any of those domestic limited liability companies and other business entities, shall not revert or be in any way impaired by reason of this act; but all rights of creditors and all liens upon any property of any of those domestic limited liability companies and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of those domestic limited liability companies and other business entities that have merged or consolidated shall attach to the surviv-

ing or resulting domestic limited liability company or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a domestic limited liability company, including a domestic limited liability company which is not the surviving or resulting entity in the merger or consolidation, shall not require the domestic limited liability company to wind up its affairs under section 50 of this act or pay its liabilities and distribute its assets under section 51 of this act.

C.42:2B-21 Members of limited liability company, interest.

21. a. In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

- (1) The formation of the limited liability company; or
- (2) The time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

b. After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

- (1) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or

- (2) In the case of an assignee of a limited liability company interest, (a) as provided in section 46 of this act and (b) at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, when the assignee's permitted admission is reflected in the records of the limited liability company.

c. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

- d. An operating agreement or another written agreement or writing:

(1) May provide that a person shall be admitted as a member of a limited liability company, or shall become an assignee of a limited liability company interest or other rights or powers of a member to the extent assigned, and shall become bound by the operating agreement (a) if the person (or a representative authorized by the person orally, in writing or by other action such as payment for a limited liability company interest) executes the operating agreement or any other writing evidencing the intent of the person to become a member or assignee, or (b) without such execution, if the person (or a representative authorized by the person orally, in writing or by other action such as payment for a limited liability company interest) complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing and requests (orally, in writing or by other action such as payment for a limited liability company interest) that the records of the limited liability company reflect such admission or assignment; and

(2) Shall not be unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee as provided in paragraph (1) of this subsection, or by reason of its having been signed by a representatives as provided in this act.

C.42:2B-22 Operating agreement, classes of members.

22. a. An operating agreement may provide for classes or groups of members having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the operating agreement a class or group of limited liability company interests that was not previously outstanding.

b. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by members may be on a per capita, number, financial interest, class, group or any other basis. In the absence of any provision in the operating agreement, voting by members shall be on a per capita basis.

c. An operating agreement which grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

C.42:2B-23 Debts, obligations, liabilities.

23. Except as otherwise provided by this act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company; and no member, manager, employee or agent of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company, or for any debt, obligation or liability of any other member, manager, employee or agent of the limited liability company, by reason of being a member, or acting as a manager, employee or agent of the limited liability company.

C.42:2B-24 Conditions of ceased membership.

24. A person ceases to be a member of a limited liability company upon the happening of any of the following events:

a. Unless otherwise provided in an operating agreement, or with the written consent of all members, a member:

- (1) Makes an assignment for the benefit of creditors;
- (2) Files a voluntary petition in bankruptcy;
- (3) Is adjudged bankrupt or insolvent, or has entered against him an order for relief, in any bankruptcy or insolvency proceeding;
- (4) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;
- (5) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature;
- (6) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties; or

b. Unless otherwise provided in an operating agreement, or with the written consent of all members, 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or

regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

C.42:2B-25 Information; member's rights; manager's rights.

25. a. Each member of a limited liability company has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be set forth in an operating agreement or otherwise established by the manager or, if there is no manager, then by the members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(1) True and full information regarding the status of the business and financial condition of the limited liability company;

(2) Promptly after becoming available, a copy of the limited liability company's federal, State and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each member and manager;

(4) A copy of any written operating agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the operating agreement and any certificate and all amendments thereto have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(6) Except as kept confidential pursuant to subsection c. of this section, other information regarding the affairs of the limited liability company as is just and reasonable.

b. Each manager shall have the right to examine all of the information described in this section for a purpose reasonably related to his position as a manager.

c. The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which the

manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

d. A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

e. Any demand by a member under this section shall be in writing and shall state the purpose of the demand.

C.42:2B-26 Provisions of operating agreement on performance of members.

26. An operating agreement may provide that a member who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences, and at the time or upon the happening of events specified in the operating agreement, a member shall be subject to specified penalties or specified consequences. Unless otherwise provided in the operating agreement, a member shall not be personally liable for failure to perform in accordance with, or to comply with the terms and conditions of, the operating agreement or for any other reason unless such failure to perform or to comply or such other reason constitutes gross negligence or willful misconduct by the member. The operating agreement may, in any event, eliminate or limit the personal liability of the member for such failure to perform or to comply or for such other reason.

C.42:2B-27 Management of company, control.

27. Unless otherwise provided in an operating agreement, the management of a limited liability company shall be vested in its members in proportion to the then current percentage or other interest of members in the profits of the limited liability company owned by all of the members, the decision of members owning more than 50 percent of the then current percentage or other interest in the profits controlling; provided, however, that if an operating agreement provides for the management, in whole or in part, of a limited liability company by a manager, the management of the limited liability company, to the extent so provided, shall be vested in the manager who shall be chosen by the members in the manner provided in the operating agreement. The manager shall also hold the offices and have the responsibilities accorded to him by the members and set forth in an operating

agreement. Subject to section 37 of this act, a manager shall cease to be a manager as provided in an operating agreement.

C.42:2B-28 Manager as member.

28. A manager of a limited liability company may make contributions to the limited liability company and share in the profits and losses of, and in distributions from, the limited liability company as a member. A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in an operating agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his participation in the limited liability company as a member.

C.42:2B-29 Operating agreement provisions for classes and groups of managers.

29. a. An operating agreement may provide for classes or groups of managers having such relative rights, powers and duties as the operating agreement may provide, and may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the operating agreement a class or group of limited liability company interests that was not previously outstanding.

b. An operating agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. Voting by managers may be on a per capita, number, financial interest, class, group or any other basis.

c. An operating agreement which grants a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

C.42:2B-30 Provisions of operating agreement on performance of managers.

30. An operating agreement may provide that a manager who fails to perform in accordance with, or to comply with the terms

and conditions of, the operating agreement shall be subject to specified penalties or specified consequences, and at the time or upon the happening of events specified in the operating agreement, a manager shall be subject to specified penalties or specified consequences. Unless otherwise provided in the operating agreement, a manager shall not be personally liable for failure to perform in accordance with, or to comply with the terms and conditions of, the operating agreement or for any other reason unless such failure to perform or to comply or such other reason constitutes gross negligence or willful misconduct by the manager. The operating agreement may, in any event, eliminate or limit the personal liability of the manager for such failure to perform or to comply or for such other reason.

C.42:2B-31 Protection for member, manager for reliance on information.

31. A member or manager of a limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon such information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

C.42:2B-32 Member contributions.

32. The contribution of a member to a limited liability company may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

C.42:2B-33 Obligations of members for contributions promised.

33. a. Except as provided in an operating agreement, a member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a member does not make the required contribution of property or services, he is obligated at the option of the limited liability company to contribute cash equal to that portion of the

agreed value (as stated in the records of the limited liability company) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the operating agreement or applicable law.

b. Unless otherwise provided in an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after the entering into of an operating agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

c. An operating agreement may provide that the limited liability company interest of any member who fails to make any contribution that he is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating his limited liability company interest to that of nondefaulting members, a forced sale of his limited liability company interest, forfeiture of his limited liability company interest, the lending by other members of the amount necessary to meet his commitment, a fixing of the value of his limited liability company interest by appraisal or by formula and redemption or sale of his limited liability company interest at such value, or other penalty or consequence.

C.42:2B-34 Allocation of profits and losses.

34. The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in an operating agreement. If

the operating agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

C.42:2B-35 Distributions of cash, other assets.

35. Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in an operating agreement. If the operating agreement does not so provide, distributions shall be made on the basis of the agreed value (as stated in the records of the limited liability company) of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

C.42:2B-36 Distributions to member prior to resignation, dissolution, winding up.

36. Except as provided in this act, to the extent and at the times or upon the happening of the events specified in an operating agreement, a member is entitled to receive from a limited liability company distributions before his resignation from the limited liability company and before the dissolution and winding up thereof.

C.42:2B-37 Resignation of manager.

37. A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in an operating agreement and in accordance with the operating agreement. An operating agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that an operating agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates an operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to the resigning manager.

C.42:2B-38 Resignation of member.

38. A member may resign from a limited liability company at the time or upon the happening of events specified in an operating agreement and in accordance with the operating agreement. If an

operating agreement does not specify the time or the events upon the happening of which a member may resign or a definite time for the dissolution and winding up of a limited liability company, a member may resign upon not less than six months' prior written notice to the limited liability company at its registered office as set forth in the certificate of formation filed in the office of the Secretary of State and to each member and manager at each member's and manager's address as set forth on the records of the limited liability company. Notwithstanding anything to the contrary set forth in this act, an operating agreement may provide that a member may not resign from a limited liability company or assign his limited liability company interest prior to the dissolution and winding up of the limited liability company.

C.42:2B-39 Distribution to resigning member.

39. Except as provided in this act, upon resignation any resigning member is entitled to receive any distribution to which he is entitled under an operating agreement and, if not otherwise provided in an operating agreement, he is entitled to receive, within a reasonable time after resignation, the fair value of his limited liability company interest as of the date of resignation based upon his right to share in distributions from the limited liability company.

C.42:2B-40 Member distributions limited to cash.

40. Except as provided in an operating agreement, a member, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in an operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited liability company.

C.42:2B-41 Creditor status for member entitled to distribution.

41. Subject to sections 42 and 51 of this act, and unless otherwise provided in an operating agreement, at the time a member becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

C.42:2B-42 Distributions to members, limitations; violations, liability.

42. a. A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

b. A member who receives a distribution in violation of subsection a. of this section, and who knew at the time of the distribution that the distribution violated subsection a. of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection a. of this section, and who did not know at the time of the distribution that the distribution violated subsection a. of this section, shall not be liable for the amount of the distribution. Subject to subsection c. of this section, this subsection b. shall not affect any obligation or liability of a member under an operating agreement or other applicable law for the amount of a distribution.

c. Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this act or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from the member is commenced prior to the expiration of the three year period and an adjudication of liability against the member is made in the said action.

C.42:2B-43 Company interest, personal property.

43. A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

C.42:2B-44 Company interest assignable; rights of assignee.

44. a. A limited liability company interest is assignable in whole or in part except as provided in an operating agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in an operating agreement and upon:

(1) The approval of all of the members of the limited liability company other than the member assigning his limited liability company interest; or

(2) Compliance with any procedure provided for in the operating agreement.

b. Unless otherwise provided in an operating agreement:

(1) An assignment entitles the assignee to share in the profits and losses, to receive the distribution or distributions, and to receive the allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned;

(2) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his limited liability company interest; and

(3) The pledge of, or granting of a security interest, lien or other encumbrance in or against, any or all of the limited liability company interest of a member shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

c. An operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company.

d. Unless otherwise provided in an operating agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

C.42:2B-45 Rights of judgment creditor of a member.

45. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. An action by a court pursuant to this section does not deprive any member of the benefit of any exemption laws applicable to his limited liability company interest.

C.42:2B-46 Conditions for assignee becoming member; rights, obligations, liability.

46. a. An assignee of a limited liability company interest may become a member as provided in an operating agreement and upon:

(1) The approval of all of the members of the limited liability company other than the member assigning his limited liability company interest; or

(2) Compliance with any procedure provided for in the operating agreement.

b. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under an operating agreement and this act. Notwithstanding the foregoing, unless otherwise provided in an operating agreement, an assignee who becomes a member is liable for the obligations of his assignor to make contributions as provided in section 33 of this act, but shall not be liable for the obligations of his assignor under sections 37 or 38. However, the assignee is not obligated for liabilities, including the obligations of his assignor to make contributions as provided in section 33 of this act, unknown to the assignee at the time he became a member and which could not be ascertained from an operating agreement.

c. Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his liability to a limited liability company under sections 32 through 42 of this act.

C.42:2B-47 Death, incompetence of member.

47. If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power under an operating agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

C.42:2B-48 Dissolution, wind up.

48. A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

a. At the time specified in an operating agreement, or 30 years from the date of the formation of the limited liability company if no such time is set forth in the operating agreement;

b. Upon the happening of events specified in an operating agreement;

c. The written consent of all members;

d. The death, retirement, resignation, expulsion, bankruptcy or dissolution of a member or the occurrence of any other event which terminates the continued membership of a member in the limited liability company unless the business of the limited liability company is continued either by the consent of all the

remaining members within 90 days following the occurrence of any such event or pursuant to a right to continue stated in the operating agreement; or

e. The entry of a decree of judicial dissolution under section 49 of this act.

C.42:2B-49 Dissolution by decree.

49. On application by or for a member or manager the Superior Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with an operating agreement.

C.42:2B-50 Wind-up of affairs; appointment of liquidating trustee; liability not affected, imposed.

50. a. Unless otherwise provided in an operating agreement, a manager who has not wrongfully dissolved a limited liability company or, if there is no manager, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members who own more than 50 percent of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs; but the Court of Chancery, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his legal representative or assignee, and in connection therewith, may appoint a liquidating trustee.

b. Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in section 14 of this act, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.

C.42:2B-51 Distribution of assets upon winding up; payment of claims, obligations.

51. a. Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 36 or 39 of this act;

(2) Unless otherwise provided in an operating agreement, to members and former members in satisfaction of liabilities for distributions under section 36 or 39 of this act; and

(3) Unless otherwise provided in an operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

b. A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, the claims and obligations shall be paid in full and any provision for payment made shall be made in full. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in an operating agreement, any remaining assets shall be distributed as provided in this act. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited liability company by reason of the trustee's actions in winding up the limited liability company.

C.42:2B-52 Laws governing foreign company.

52. The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers and a foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this State.

C.42:2B-53 Application for registration.

53. a. Before doing business in this State, a foreign limited liability company shall register with the Secretary of State. In order

to register, a foreign limited liability company shall submit to the Secretary of State a copy executed by an authorized person of an application for registration as a foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in this State;

(2) The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a statement from an authorized person that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company or a registered limited liability partnership under the laws of the jurisdiction of its formation;

(3) The nature of the business or purposes to be conducted or promoted in this State;

(4) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 6 of this act;

(5) A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process; and

(6) The date on which the foreign limited liability company first did, or intends to do, business in this State.

b. A person shall not be deemed to be doing business in this State solely by reason of being a member or manager of a domestic limited liability company or a foreign limited liability company.

C.42:2B-54 Approval of application.

54. a. If the Secretary of State finds that an application for registration from a foreign limited liability company conforms to law and all requisite fees have been paid, he shall:

(1) Certify that the application has been filed in his office by endorsing upon the original application the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application.

b. The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or his representative.

C.42:2B-55 Certificate correcting statement.

55. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly

file in the office of the Secretary of State a certificate, executed by an authorized person, correcting the statement.

C.42:2B-56 Cancellation of registration.

56. A foreign limited liability company may cancel its registration by filing in the office of the Secretary of State a certificate of cancellation, executed by an authorized person. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this State.

C.42:2B-57 Registration of foreign liability company; liability; violations, penalties.

57. a. A foreign limited liability company doing business in this State may not maintain any action, suit or proceeding in this State until it has registered in this State, and has paid to this State all fees and penalties for the years or parts thereof, during which it did business in this State without having registered.

b. The failure of a foreign limited liability company to register in this State does not impair:

(1) The validity of any contract or act of the foreign limited liability company;

(2) The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) Prevent the foreign limited liability company from defending any action, suit or proceeding in any court of this State.

c. A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in this State without registration.

d. Any foreign limited liability company doing business in this State without first having registered shall be fined and shall pay to the Secretary of State \$200 for each year or part thereof during which the foreign limited liability company failed to register in this State. The penalty shall be recovered with costs in an action prosecuted by the Attorney General. The Superior Court may proceed in the action in a summary manner or otherwise.

C.42:2B-58 Jurisdiction; injunctive relief; summary proceedings.

58. a. The Superior Court shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in this State if the foreign limited liability company has failed to register under this act or if the foreign limited liability company has secured a certified and endorsed

application from the Secretary of State under section 54 of this act on the basis of false or misleading representations, or if the registration of the foreign limited liability company in this State has been surrendered or if the foreign limited liability company has been dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its organization. The Attorney General shall, upon his own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which the foreign limited liability company is doing or has done business.

b. The provision of this section shall not exclude any other ground provided by law for injunctive relief against a foreign limited liability company to restrain it from the exercise of any franchise or the carrying on of any business, purpose or activity within this State.

c. The Superior Court may proceed in the action in a summary manner or otherwise.

C.42:2B-59 Application of C.42:2B-15 to foreign companies.

59. Section 15 of this act shall be applicable to foreign limited liability companies as if they were domestic limited liability companies.

C.42:2B-60 Action by member.

60. A member may bring an action in the Superior Court in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

C.42:2B-61 Derivative actions.

61. In a derivative action, the plaintiff must be a member at the time of bringing the action and:

- a. At the time of the transaction of which he complains; or
- b. His status as a member had devolved upon him by operation of law or pursuant to the terms of an operating agreement from a person who was a member at the time of the transaction.

C.42:2B-62 Contents of complaint.

62. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort.

C.42:2B-63 Entitlement to security.

63. Unless the plaintiff's or plaintiffs' contributions to the limited liability company or the plaintiff's or plaintiffs' allocable share of property amount to 5% or more of the contributions of, or allocation to, property of all members of the limited liability

company in their status as members, or unless the contributions or the share allocable to the plaintiff or plaintiffs have a fair value in excess of \$100,000, the limited liability company in whose right the derivative action is brought shall be entitled at any stage of the proceedings before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorney's fees, which may be incurred by the limited liability company in connection with the action. The amount of this security shall be determined by the Superior Court.

C.42:2B-64 Award to plaintiff.

64. If a derivative action is successful, in whole or in part, as a result of a judgment, compromise or settlement of the derivative action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from any recovery in any such action or from a limited liability company.

C.42:2B-65 Fees.

65. a. No document required to be filed under this act shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State:

(1) Upon the receipt for filing of a certificate of registration of alternate name or a certificate of renewal pursuant to section 4 of this act, a fee in the amount of \$50.

(2) Upon the receipt for filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to section 5 of this act, a fee in the amount of \$50.

(3) Upon the receipt for filing of a certificate under subsection b. of section 6 of this act, a fee in the amount of \$25, upon the receipt for filing of a certificate under subsection b. of section 7 of this act, a fee in the amount of \$25 and a further fee of \$10 for each limited liability company affected by such certificate.

(4) Upon the receipt for filing of a notice of resignation and affidavit pursuant to subsection c. of section 7 of this act, a fee in the amount of \$25 and upon the receipt for filing of a certificate of change pursuant to subsection c. of section 7 of this act, a fee in the amount of \$25.

(5) Upon the receipt for filing of a certificate of formation under section 11 of this act, a certificate of correction under section 12 of this act, a certificate of amendment under section 13 of this act, a certificate of cancellation under section 14 of this act, a certificate of merger or consolidation under section 20 of this act

or a restated certificate of formation under section 19 of this act, a fee in the amount of \$100.

(6) For certifying copies of any paper on file as provided for by this act, a fee in the amount of \$25 for each copy certified.

(7) The Secretary of State may issue photocopies of instruments on file as well as other copies, and for all of those copies, whether certified or not, a fee in the amount of \$10 for the first page and \$2 per page thereafter shall be paid.

(8) Upon the receipt for filing of an application for registration as a foreign limited liability company under section 53 of this act or a certificate of cancellation under section 56 of this act, a fee in the amount of \$100.

(9) For preclearance of any document for filing, a fee in the amount of \$50.

(10) For preparing and providing a written report of a record search, a fee in the amount of \$50.

(11) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (6) of this subsection, a fee in the amount of \$50, except that for issuing any certificate of the Secretary of State that recites all of a limited liability company's filings with the Secretary of State, a fee of \$100 shall be paid for each such certificate.

(12) For receiving and filing and/or indexing any certificate, affidavit, agreement or any other paper provided for by this act, for which no different fee is specifically prescribed, a fee in the amount of \$50.

(13) The Secretary of State may in his discretion charge a fee of \$50 for each check received for payment of any fee that is returned due to insufficient funds or the result of a stop payment order.

b. In addition to those fees charged under subsection a. of this section, there shall be collected by and paid to the Secretary of State the following:

(1) for all services described in subsection a. of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to \$50; and

(2) for all services described in subsection a. of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to \$25.

The Secretary of State shall establish (and may from time to time amend) a schedule of specific fees payable pursuant to this subsection.

c. The Secretary of State may in his discretion permit the extension of credit for the fees required by this section upon such terms as he shall deem to be appropriate.

C.42:2B-66 Liberal construction.

66. a. This act is to be liberally construed to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

b. To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating to a limited liability company or to another member or manager: (1) any member or manager acting under an operating agreement shall not be liable to the limited liability company or to any other member or manager of the limited liability company for the member's or manager's good faith reliance on the provisions of the operating agreement; and (2) the member's or manager's duties and liabilities may be expanded or restricted by provisions in an operating agreement.

C.42:2B-67 Rules of law and equity govern.

67. In any case not provided for in this act, the rules of law and equity, including the law merchant, shall govern.

C.42:2B-68 Provisions of act subject to change.

68. All provisions of this act may be altered from time to time or repealed and all rights of members and managers are subject to this reservation.

C.42:2B-69 Taxation classification.

69. For all purposes of taxation under the laws of this State, a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For all purposes of taxation under the laws of this State, a member or an assignee of a member of a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company shall be treated as a partner in a partnership unless the limited liability company is classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as the member or assignee of a member has for federal income tax purposes.

C.42:2B-70 Filings, reports.

70. All filings and reports required by this act to be filed in the office of the Secretary of State shall be on forms and in a manner which shall be prescribed and furnished by the Secretary of State.

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

Approved July 30, 1993.

CHAPTER 211

AN ACT providing immunity from liability to persons releasing or discharging certain chemical substances for the purpose of personal self-defense, and supplementing chapter 62A of Title 2A of the New Jersey Statutes.

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

C.2A:62A-20 Immunity from civil liability for use of chemical substance for self-defense.

1. Notwithstanding any provisions of law to the contrary, a person who possesses a chemical substance for the purpose of personal self-defense in accordance with subsection i. of N.J.S.2C:39-6 and who releases or discharges that chemical substance upon or toward another person shall not be liable in any civil action for damages resulting from that release or discharge when the actor reasonably believes that the releasing or discharging of that chemical substance is immediately necessary for the purpose of personal self-defense. Nothing in this section shall be deemed to grant immunity to any person causing any damage by his willful, wanton or grossly negligent unlawful releasing or discharging of such a chemical substance upon or toward another person.

2. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 212

AN ACT appropriating funds from the "Public Purpose Buildings and Community-Based Facilities Construction Fund" to the Department of Corrections for correctional housing in Atlantic County.

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

1. There is appropriated to the Department of Corrections from the "Public Purpose Buildings and Community-Based Facilities Construction Fund" created pursuant to the "Public Purpose

Buildings and Community-Based Facilities Construction Bond Act of 1989," P.L.1989, c.184, the sum of \$1,365,000 for the following purpose:

DEPARTMENT OF CORRECTIONS

50 State beds in Atlantic County	<u>\$1,365,000</u>
Total Appropriation	<u>\$1,365,000</u>

2. There is also appropriated from the "Public Purpose Buildings and Community-Based Facilities Construction Fund," such items as may be necessary to meet any expense incurred by the issuing officials under P.L.1989, c.184 for advertising, engraving, printing, clerical, legal or other services necessary to carry out the duties imposed upon them by the provisions of that act.

3. In order to provide flexibility in administering the provisions of this act, the Commissioner of the Department of Corrections may apply to the Director of the Division of Budget and Accounting in the Department of the Treasury for permission to transfer a part of any item to any other item within the respective department accounts in the "Public Purpose Buildings and Community-Based Facilities Construction Fund." The transfers shall be made in a manner consistent with section 29 of P.L.1989, c.184.

4. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 213

AN ACT appropriating \$2,900,000 from the "Jobs, Science and Technology Bond Act of 1984" for the purpose of constructing a technology education center at Burlington County College to be operated in conjunction with the New Jersey Institute of Technology.

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

1. There is appropriated to the Department of Higher Education from the "Jobs, Science and Technology Fund" created pursuant to section 14 of the "Jobs, Science and Technology Bond Act of 1984," P.L.1984, c.99, the sum of \$2,900,000 for the purpose of constructing a technology education center at Burlington County College to be operated in conjunction with the New Jersey Institute of Technology.

2. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1984, c.99.

3. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 214

AN ACT concerning shoplifting 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:61C-1 Shoplifting, retail thefts, civil action; provided.

1. a. A person who commits the offense of shoplifting as defined in N.J.S.2C:20-11 or a person who commits the offense of theft as defined in Chapter 20 of Title 2C of the New Jersey Statutes by stealing food or drink from an eating establishment shall be liable for any criminal penalties imposed by law and shall be liable to the merchant in a civil action in an amount equal to the following:

(1) The value of the merchandise as damages, not to exceed \$500.00, if the merchandise cannot be restored to the merchant in its original condition;

(2) Additional damages, if any, arising from the incident, not to include any loss of time or wages incurred by the merchant in connection with the apprehension of the defendant; and

(3) A civil penalty payable to the merchant in an amount of up to \$150.

b. A parent, guardian or other person having legal custody of a minor who commits the offense of shoplifting or the offense of

theft of food or drink from an eating establishment shall be liable to the merchant for the damages specified in subsection a. of this section. This subsection shall not apply to a parent whose parental custody and control of such minor has been removed by court order, decree, judgment, military service, or marriage of such infant, or to a foster parent of such minor.

c. If a merchant institutes a civil action pursuant to the provisions of this section, the prevailing party in that action shall be entitled to an award of reasonable attorney's fees and reasonable court costs.

d. Limitations on civil action:

(1) Before a civil action may be commenced, the merchant shall send a notice to the defendant's last known address giving the defendant 20 days to respond. It is not a condition precedent to maintaining an action under this act that the defendant has been convicted of shoplifting or theft.

(2) No civil action under this act may be maintained if the defendant has paid the merchant a penalty equal to the retail value of the merchandise where the merchandise was not recovered in its original condition, plus a sum of up to \$150.00.

(3) The provisions of this act do not apply in any case where the value of the merchandise exceeds \$500.00.

e. If the person to whom a written demand is made complies with such demand within 20 days following the receipt of the demand, that person shall be given a written release from further civil liability with respect to the specific act of shoplifting or theft.

2. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 215

AN ACT concerning personal assistance services and amending and supplementing P.L.1987, c.350.

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

1. Section 1 of P.L.1987, c.350 (C.30:4G-13) is amended to read as follows:

C.30:4G-13 Short title.

1. This act shall be known and may be cited as the “Personal Assistance Services Act.”

2. Section 2 of P.L.1987, c.350 (C.30:4G-14) is amended to read as follows:

C.30:4G-14 Definitions.

2. As used in this act:

“Applicant” means a person who applies for services under the personal assistance services program.

“Chronic physical disability” means a severe impairment of a permanent nature which so restricts a person’s ability to perform essential activities of daily living that the person needs assistance in order to maintain the person’s independence and health.

“Commissioner” means the Commissioner of Human Services.

“Consumer” means a person who either meets the eligibility criteria set forth in section 4 of this act, or has received an individual exception to the eligibility criteria in subsection i or j of section 4 of this act under rules established by the commissioner, and who is receiving services.

“Department” means the Department of Human Services.

“County designated agency” means a county office for the disabled or other agency designated by the county government, subject to approval by the commissioner, to administer in that county the personal assistance services program established pursuant to this act. A county designated agency shall have an advisory council of which at least 51% of the members are persons with disabilities.

“Personal assistant” means a person who meets the qualifications with regard to training, equivalent work experience or certification in the provision of personal assistance services established by the commissioner and who provides personal assistance services to a consumer.

“Personal assistance services” means health and chore related tasks performed by a personal assistant. Personal assistance services include, but are not limited to, assistance in essential daily activities such as bathing, dressing and meal preparation; assistance with mobility, laundry and shopping; and driving or other forms of transportation.

3. Section 3 of P.L.1987, c.350 (C.30:4G-15) is amended to read as follows:

C.30:4G-15 Personal assistance services program.

3. There is established a personal assistance services program in the Department of Human Services, to be administered by county designated agencies in each of the 21 counties. The program, within the limits of funds appropriated or otherwise made available to it, shall assist adults with chronic physical disabilities in the performance of routine, nonmedical tasks that are directly related to maintaining their health and independence, in order to enable these persons to be employed or receive training or education related to employment or to support community-based independent living.

4. Section 4 of P.L.1987, c.350 (C.30:4G-16) is amended to read as follows:

C.30:4G-16 Eligibility.

4. A person is eligible for the personal assistance services program if:

- a. The person has a chronic physical disability;
- b. The person is 18 through 65 years of age;
- c. The person is a resident of this State;
- d. The person is in need of personal assistance services pursuant to a written plan of service;
- e. The person is capable of managing and supervising their personal assistance services;
- f. A relative or other informal care giver is not available to provide the services that the person needs;
- g. The person lives or plans to live in a private house or apartment, rooming or boarding house, group home, educational facility or residential health care facility; and the personal assistance services that the person shall receive are supplemental to, and not duplicative of, services provided to the person in the rooming or boarding house, group home, educational facility or residential health care facility pursuant to licensure requirements. A person who resides, or is a patient, in a nursing or intermediate care facility, special hospital or other inpatient medical setting is not eligible for the personal assistance services program;
- h. The attending physician of the person who shall receive the personal assistance services has confirmed in writing that the person has a chronic physical disability, requires no assistance in the

coordination of therapeutic regimes, and that the personal assistance services will be appropriate to meet the person's needs; and

i. The person utilizes no more than 40 hours of personal assistance services from the program per week. The commissioner shall develop rules for individual exceptions to this requirement.

j. The commissioner shall develop rules for individual exceptions to the age criteria.

5. Section 5 of P.L.1987, c.350 (C.30:4G-17) is amended to read as follows:

C.30:4G-17 Application process.

5. a. An individual requesting personal assistance services shall make an inquiry to the county designated agency in the county where the individual resides, or intends to reside. If the applicant meets the criteria set forth in subsections a., b., c., and g. of section 4 of this act, then the county designated agency shall furnish the applicant with a complete application package for services under the personal assistance services program. If the applicant does not meet the criteria set forth in subsections a., b., c., and g. of section 4 of this act, the individual shall be provided with written notification of ineligibility by the county designated agency.

b. Upon notification from the applicant that he has completed the application package, the county designated agency shall arrange for a social assessment of the applicant. The assessment shall be used to determine the applicant's eligibility as set forth in subsections d., e., f., h., and i. of section 4 of this act.

c. As part of the application process, the applicant shall prepare a personal assistance services plan, with participation from the county designated agency and assessor, if requested by the applicant, which will meet the applicant's need for personal assistance services. The plan shall include a list of the types of services required, and include an estimate of the time needed and frequency of services to be provided under the personal assistance services program.

d. Following receipt of the results of an assessment, the personal assistance services plan and the other application materials from the applicant, the county designated agency shall determine the applicant's eligibility and provide written notification of the result to the applicant.

e. If the applicant has been determined to be eligible, the county designated agency shall conduct a financial evaluation of the applicant to determine the requirement of the person, or per-

son's spouse, to pay for personal assistance services, in accordance with the sliding fee scale established pursuant to section 7 of this act. If the eligible applicant is found to be responsible for the payment of cost share, the applicant shall be furnished with an estimate of the total monthly cost of services, and a statement of the percentage of total cost, or actual amount of money that the eligible person or the person's spouse is required to pay.

f. The county designated agency shall seek to implement the personal assistance service plan prepared by the consumer, subject to the availability of funding for personal assistance services. The plan shall be revised upon request of the consumer or the county designated agency.

g. The county designated agency shall perform a comprehensive social and financial reassessment of the consumer at 12-month intervals.

h. In the event of a dispute between the applicant and the county designated agency with regard to the applicant's eligibility for the personal assistance services program or concerning the services plan prepared pursuant to subsection c. of this section, the applicant 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.).

i. The social assessments and financial evaluations performed pursuant to subsections b. and e., respectively, of this section, and the personal assistance services plan prepared pursuant to subsection c. of this section, shall be completed on forms prescribed by the commissioner.

j. To assure the timeliness of the process, the commissioner shall establish, in rules, specific time frames for the activities in subsections a., b., d. and e. of this section.

6. Section 6 of P.L.1987, c.350 (C.30:4G-18) is amended to read as follows:

C.30:4G-18 Contracts with other providers; fee schedule.

6. a. The county designated agency may contract with other service providers, including private individuals, for the provision of personal assistance services pursuant to this act, in accordance with rules adopted by the commissioner.

b. The commissioner shall establish a fee schedule for payments or reimbursements to providers of personal assistance services. The fee schedule shall be reviewed every two years and recommendations shall be made to the commissioner by the State Consumer Advisory Council on Personal Assistance Services.

7. Section 7 of P.L.1987, c.350 (C.30:4G-19) is amended to read as follows:

C.30:4G-19 Sliding fee scale.

7. a. The commissioner shall establish a sliding fee scale for personal assistance services based upon the ability of an eligible person or the person's spouse to pay for those services. The sliding fee scale shall apply only to an eligible person and the person's spouse whose combined annual gross income exceeds the State's applicable income eligibility limit for social services established pursuant to the "Social Services Block Grant Act," Pub.L. 97-35 (42 U.S.C. § 1397 et seq.). Any eligible person whose combined annual gross income is less than the State's applicable income eligibility limit shall not be required to pay for personal assistance services.

b. If the costs of an eligible person's personal assistance services are covered in whole or in part by another State or federal government program or insurance contract, the government program or insurance carrier shall be the primary payer and the personal assistance services program shall be the secondary payer.

c. The eligible person receiving personal assistance services and the personal assistant shall sign time sheets attesting to the hours of service rendered, and the personal assistant shall then be paid by the county designated agency.

8. Section 8 of P.L.1987, c.350 (C.30:4G-20) is amended to read as follows:

C.30:4G-20 State Consumer Advisory Council on Personal Assistance Services.

8. a. There is established the State Consumer Advisory Council on Personal Assistance Services in the department, which shall consist of 21 members appointed by the commissioner, one from each county, at least 75 percent of whom are consumers of personal assistance services.

Vacancies in the membership of the advisory council shall be filled in the same manner provided for the original appointments. The members of the advisory council shall serve without compensation but shall be reimbursed for the reasonable expenses necessarily incurred in the performance of their duties.

b. The advisory council shall organize no later than 30 days after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the advisory council.

c. The department shall provide such stenographic, clerical and other administrative assistants, and such professional staff, as the advisory council requires to carry out its work.

d. It shall be the responsibility of the advisory council to:

(1) Advise the commissioner on matters pertaining to personal assistance services and the development of the personal assistance services program, upon the commissioner's request;

(2) Review the rules adopted for the personal assistance services program and make recommendations to the commissioner thereon;

(3) Evaluate the effectiveness of the personal assistance services program in meeting its objectives and share that evaluation with the commissioner; and

(4) Actively explore innovative service delivery models to enhance the consumer-driven nature of the personal assistance services program.

9. Section 9 of P.L.1987, c.350 (C.30:4G-21) is amended to read as follows:

C.30:4G-21 Rules.

9. The commissioner, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules to effectuate the purposes of this act.

C.30:4G-16.1 Personal assistance consumer bill of rights.

10. There is established a personal assistance consumer bill of rights. Each consumer, and, as appropriate, each applicant:

a. Shall be treated with courtesy, respect, and full recognition of his dignity, individuality, and right to control his own household and lifestyle, including the identification and determination of his own needs, schedules and the services necessary to meet these needs;

b. Shall be served by personal assistants who are properly trained and competent to perform their duties;

c. Shall receive services in compliance with all State laws and regulations without discrimination based on race, religion, gender, age, creed or disability in the provision or quality of services;

d. Shall be free from mental and physical abuse, neglect and exploitation;

e. Shall be accorded privacy while receiving services in communications and in all daily activities;

f. Shall be accorded respect for his property rights;

g. Shall have his personal, financial and medical records treated as confidential;

- h. Shall be free to fully exercise his civil and due process rights and to be assisted by a personal assistant as appropriate and necessary;
- i. Shall receive in a timely manner all decisions regarding eligibility and amount and kind of services and the reasons therefor in writing and, if appropriate, orally, along with administrative hearings and appeals procedures;
- j. Shall have access to a fair appeals process through which disputes can be resolved;
- k. Shall receive written information regarding consumer standards and responsibilities in the personal assistance services program and to have them verbally explained as needed;
- l. Shall have as few personal assistants entering his home as possible;
- m. Shall have the right to interview, screen and select his personal assistant; and
- n. Shall dismiss those personal assistants who do not respect consumer rights.

11. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 216

AN ACT concerning the operation of brewery pubs, amending R.S.33:1-10 R.S.33:1-12, R.S.33:1-43 and P.L.1989, c.51, and supplementing Title 54 of the Revised Statutes.

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

1. R.S.33:1-10 is amended to read as follows:

Class A licenses; subdivisions; fees.

33:1-10. Plenary brewery license. 1a. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursu-

ant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$8,500.00.

Limited brewery license. 1b. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages in a quantity to be expressed in said license, dependent upon the following fees and not in excess of 300,000 barrels of 31 fluid gallons capacity per year and to sell and distribute this product to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be graduated as follows: to so brew not more than 50,000 barrels of 31 fluid gallons capacity per annum, \$1,000.00; to so brew not more than 100,000 barrels of 31 fluid gallons capacity per annum, \$2,000.00; to so brew not more than 200,000 barrels of 31 fluid gallons capacity per annum, \$4,000.00; to so brew not more than 300,000 barrels of 31 fluid gallons capacity per annum, \$6,000.00.

Restricted Brewery License. 1c. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages in a quantity to be expressed in such license not in excess of 3,000 barrels of 31 fluid gallons capacity per year. Notwithstanding the provisions of R.S.33:1-26, the director shall issue a restricted brewery license only to a person or an entity which has identical ownership to an entity which holds a plenary retail consumption license issued pursuant to R.S.33:1-12, provided that such plenary retail consumption license is operated in conjunction with a restaurant regularly and principally used for the purpose of providing meals to its customers and having adequate kitchen and dining room facilities, and that the licensed restaurant premises is immediately adjoining the premises licensed as a restricted brewery. The holder of this license shall only be entitled to sell or deliver the product to that restaurant premises. The fee for this license shall be \$1,000, which fee shall entitle the holder to brew up to 1,000 barrels of 31 fluid gallons per annum. The licensee also shall pay an additional \$500 for every additional 1,000 barrels of 31 fluid gallons produced. No more than two restricted brewery licenses shall be issued to a person or entity which holds an interest in a plenary retail consumption license. If the governing body of the municipality in which the licensed premises will be located should file a written objection, the director shall hold a hearing and may issue the license only if the

director finds that the issuance of the license will not be contrary to the public interest. All fees related to the issuance of both licenses shall be paid in accordance with statutory law.

Plenary winery license. 2a. Provided that the holder is engaged in growing and cultivating grapes or fruit used in the production of wine on at least three acres on, or adjacent to, the winery premises, the holder of this license shall be entitled, subject to rules and regulations, to produce any fermented wines, and to blend, fortify and treat wines, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter and to churches for religious purposes, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse, and to sell his products at retail to consumers on the licensed premises of the winery for consumption on or off the premises and to offer samples for sampling purposes only. The fee for this license shall be \$750.00. The holder of this license shall also have the right to sell such wine at retail in original packages in two salesrooms apart from the winery premises for consumption off the premises and for sampling purposes for consumption on the premises, at a fee of \$200.00 for each salesroom. Additionally, subject to rules and regulations, one salesroom per county may be jointly controlled and operated by at least five plenary or farm winery licensees for the sale of the products produced under the licenses of such licensees for consumption off the premises and for consumption on the licensed premises for sampling purposes only, at an additional fee of \$500.00 per county salesroom. Any plenary licensee who has heretofore utilized a privilege to sell his products for consumption on the premises at a salesroom other than the licensed premises of the winery may retain that privilege at the existing location. For the purposes of this subsection, "sampling" means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one-half ounces of any wine.

Farm winery license. 2b. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines and fruit juices in a quantity to be expressed in said license, dependent upon the following fees and not in excess of 50,000 gallons per year and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter and to churches for religious purposes and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and to sell at retail to consumers for consumption on or off the

licensed premises and to offer samples for sampling purposes only. The license shall be issued only when the winery at which such fermented wines and fruit juices are manufactured is located and constructed upon a tract of land exclusively under the control of the licensee, provided that the licensee is actively engaged in growing and cultivating an area of not less than three acres on or adjacent to the winery premises and on which are growing grape vines or fruit to be processed into wine or fruit juice; and provided, further, that for the first five years of the operation of the winery such fermented wines and fruit juices shall be manufactured from at least 51% grapes or fruit grown in the State and that thereafter they shall be manufactured from grapes or fruit grown in this State at least to the extent required for labeling as "New Jersey Wine" under the applicable federal laws and regulations. The containers of all wine sold to consumers by such licensee shall have affixed a label stating such information as shall be required by the rules and regulations of the Director of the Division of Alcoholic Beverage Control. The fee for this license shall be graduated as follows: to so manufacture between 30,000 and 50,000 gallons per annum, \$300.00; to so manufacture between 2,500 and 30,000 gallons per annum, \$200.00; to so manufacture between 1,000 and 2,500 gallons per annum, \$100.00; to so manufacture less than 1,000 gallons per annum, \$50.00. No farm winery license shall be held by the holder of a plenary winery license or be situated on a premises licensed as a plenary winery.

The holder of this license shall also have the right to sell his products in original packages at retail to consumers in two salesrooms apart from the winery premises for consumption off the premises, and for sampling purposes for consumption on the premises, at a fee of \$200.00 for each salesroom. Additionally, subject to rules and regulations, one salesroom per county may be jointly controlled and operated by at least five plenary or farm winery licensees for the sale of the products produced under the licenses of such licensees for consumption off the premises and for consumption on the licensed premises for sampling purposes only, at an additional fee of \$500.00 per county salesroom. For the purposes of this subsection, "sampling" means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one-half ounces of any wine.

Unless otherwise indicated, for the purposes of this subsection, with respect to farm winery licenses, "manufacture" means the vinification, aging, storage, blending, clarification, stabilization

and bottling of wine or juice from New Jersey fruit to the extent required by this subsection.

Wine blending license. 2c. The holder of this license shall be entitled, subject to rules and regulations, to blend, treat, mix, and bottle fermented wines and fruit juices with non-alcoholic beverages, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$500.00.

Plenary distillery license. 3a. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any distilled alcoholic beverages and rectify, blend, treat and mix, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$10,000.00.

Limited distillery license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to manufacture and bottle any alcoholic beverages distilled from fruit juices and rectify, blend, treat, mix, compound with wine and add necessary sweetening and flavor to make cordial or liqueur, and to sell and distribute to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution and to warehouse these products. The fee for this license shall be \$3,000.00.

Supplementary limited distillery license. 3c. The holder of this license shall be entitled, subject to rules and regulations, to bottle and rebottle, in a quantity to be expressed in said license, dependent upon the following fees, alcoholic beverages distilled from fruit juices by such holder pursuant to a prior plenary or limited distillery license, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be graduated as follows: to so bottle and rebottle not more than 5,000 wine gallons per annum, \$250.00; to so bottle and rebottle not more than 10,000 wine gallons per annum, \$500.00; to so bottle and rebottle without limit as to amount, \$1,000.00.

Rectifier and blender license. 4. The holder of this license shall be entitled, subject to rules and regulations, to rectify, blend, treat and mix distilled alcoholic beverages, and to fortify, blend, and treat fermented alcoholic beverages, and prepare mixtures of alcoholic beverages, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$6,000.00.

Bonded warehouse bottling license. 5. The holder of this license shall be entitled, subject to rules and regulations, to bottle alcoholic beverages in bond on behalf of all persons authorized by federal and State law and regulations to withdraw alcoholic beverages from bond. The fee for this license shall be \$500.00. This license shall be issued only to persons holding permits to operate Internal Revenue bonded warehouses pursuant to the laws of the United States.

2. R.S.33:1-12 is amended to read as follows:

Class C licenses.

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. 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 holiday 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 \$200.00 and not more than \$2,000.00. 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 session 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 holiday 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 simi-

lar 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. 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 holiday 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 \$100.00 and not more than \$2,000.00. 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 \$25.00 and not more than \$50.00. 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 \$300.00, for use by the owners of limousines shall be \$25.00 per vehicle, and for use on a boat shall be \$50.00 on a boat 65 feet or less in length, \$100.00 on a boat more than 65 feet in length but not more than 110 feet in length, and \$300.00 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 \$50.00 and not more than \$150.00. 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 Commissioner of Alcoholic Beverage Control by rules and regulations.

3. R.S.33:1-43 is amended to read:

Alcoholic beverage retailing restrictions.

33:1-43. a. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages in New Jersey except as provided in this chapter, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler.

b. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either whole or in part, or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaling or importing interest of any kind whatsoever.

No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or product offered for sale by such brewery, winery, distillery or rectifying and blending plant or wholesaler.

c. Nothing in this section shall prohibit:

(1) The exercise of limited retail privileges by Class A or Class B licensees conferred pursuant to R.S.33:1-10, R.S.33:1-11, by rule or regulation or by special permit issued by the director;

(2) Any owner, part owner, stockholder, officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery, rectifying and blending plant or any wholesaler of alcoholic beverages, from con-

ducting, owning, either in whole or in part, or being directly or indirectly interested in the retailing of any alcoholic beverages, under any retail consumption license or State issued permit, in conjunction with and as a part of the operations of a hotel or motel;

(3) Any owner, part owner, stockholder or officer or director of any corporation, or any other person or corporation interested in any way whatsoever in the retailing of alcoholic beverages, under a retail consumption license or State issued permit, in conjunction with and as a part of the operations of a hotel or motel from conducting, owning, either in whole or in part, or being a shareholder, officer or director of a corporation or association, directly or indirectly interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaling or importing interest of any kind whatsoever; or

(4) The exercise of a restricted brewery license privilege by an immediately adjoining restaurant having a plenary retail consumption license issued under R.S.33:1-12.

No more than 20% of the total gross annual revenues of a hotel or motel described in paragraphs (2) and (3) shall be derived from the sale of alcoholic beverages by the hotel or motel. A retail licensee described in paragraphs (2) and (3) shall not purchase or sell any alcoholic beverage product produced or sold by the brewery, winery, distillery, rectifying and blending plant, wholesaler or importer that has any interest in the retail license of the hotel or motel, unless the total of all such products is 5% or less of the total volume of alcoholic beverage products purchased and sold annually by the hotel or motel holding the retail license. The retail licensee shall, within 30 days following the effective date of this act, file with the Division of Alcoholic Beverage Control a list of all alcoholic beverage products which shall not be purchased or sold by the hotel or motel except to the extent permitted herein. Thereafter, the retail licensee shall file a new or amended list with the division within 30 days of any changed circumstances which affect the information on the list. This list shall be made available to the public upon request.

For purposes of this subsection "hotel" or "motel" means an establishment containing at least 100 guest room accommodations where the relationship between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest.

4. Section 7 of P.L.1989, c.51 (C.26:2BB-7) is amended to read as follows:

C.26:2BB-7 Alliance to Prevent Alcoholism and Drug Abuse.

7. a. There is created an Alliance to Prevent Alcoholism and Drug Abuse, hereinafter referred to as the "Alliance," in the Governor's Council on Alcoholism and Drug Abuse. The purpose of the Alliance is to create a network comprised of all the communities in New Jersey which is dedicated to a comprehensive and coordinated effort against alcoholism and drug abuse. The Alliance shall be a mechanism both for implementing policies to reduce alcoholism and drug abuse at the municipal level, and for providing funds, including moneys from mandatory penalties on drug offenders, to member communities to support appropriate county and municipal-based alcohol and drug abuse education and public awareness activities.

b. The Governor's Council on Alcoholism and Drug Abuse shall adopt rules and regulations for participation in, and the operation of, the Alliance and for the awarding of grants to municipalities and counties from funds appropriated for such purposes pursuant to P.L.1989, c.51 (C.26:2BB-1 et al.), section 5 of P.L.1993, c.216 (C.54:43-1.3) and funds derived from the "Drug Enforcement and Demand Reduction Fund" established pursuant to N.J.S.2C:35-15, for the purpose of developing:

(1) Organized and coordinated efforts involving schools, law enforcement, business groups and other community organizations for the purpose of reducing alcoholism and drug abuse;

(2) In cooperation with local school districts, comprehensive and effective alcoholism and drug abuse education programs in grades kindergarten through 12;

(3) In cooperation with local school districts, procedures for the intervention, treatment and discipline of students abusing alcohol or drugs;

(4) Comprehensive alcoholism and drug abuse education, support and outreach efforts for parents in the community; and

(5) Comprehensive alcoholism and drug abuse community awareness programs.

c. Funds disbursed under this section shall not supplant local funds that would have otherwise been made available for alcoholism and drug abuse initiatives. Communities shall provide matching funds when and to the extent required by the regulations adopted pursuant to this section.

d. The county agency or individual designated by the governing body of each county pursuant to subsection a. of section 4 of P.L.1983, c.531 (C.26:2B-33), is authorized to receive from the

Governor's Council on Alcoholism and Drug Abuse moneys made available pursuant to this section. The designated county agency or individual shall establish a separate fund for the receipt and disbursement of these moneys.

C.54:43-1.3 Allocation of amounts collected.

5. Any amounts collected pursuant to the "Alcoholic Beverage Tax Law," R.S.54:41-1 et seq., from a restricted brewery license issued pursuant to subsection 1c. of R.S.33:1-10 shall be credited to the Governor's Council on Alcoholism and Drug Abuse to be allocated exclusively to the Alliance to Prevent Alcoholism and Drug Abuse for the purpose of awarding grants to municipalities and counties as provided in subsection b. of section 7 of P.L.1989, c.51 (C.26:2BB-7).

6. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 217

AN ACT appropriating \$20,000,000 from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, for the development 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 to the Department of Environmental Protection from the "1992 New Jersey Green Acres Fund," established pursuant to section 21 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of \$20,000,000 for the development of lands by the State for recreation and conservation purposes. This sum shall include administrative costs and shall be allocated as follows:

<u>Project</u>	<u>County</u>	<u>Estimated Cost</u>
"Americans with Disabilities Act" Compliance	Statewide	\$1,200,000

Dam Repairs	Statewide	\$950,000
Demolition of Unused Structures	Statewide	\$550,000
Fishing Access Sites	Statewide	\$2,400,000
Hackettstown Hatchery		
Renovation (Phase I)	Warren	\$1,900,000
Health, Life, Safety and		
Environmental Compliance	Statewide	\$1,650,000
Historic Sites	Statewide	\$3,600,000
Interpretive Program	Statewide	\$200,000
Kuser Mansion	Sussex	\$100,000
Liberty State Park	Hudson	\$2,000,000
Paulinskill Trail Improvements	Warren/ Sussex	\$200,000
Road/ Bridge Improvements	Statewide	\$750,000
Sanitary Facilities/Bathhouses/		
Day Use Areas Renovation		
and Development	Statewide	\$3,050,000
Water Supply/Sewer		
Systems Renovation	Statewide	\$1,450,000

b. Any transfer of any funds listed in this section, section 1 of P.L.1993, c.386, section 1 of P.L.1991, c.13, or section 1 of P.L.1991, c.522, shall require the approval of the Joint Budget Oversight Committee or its successor.

2. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1992, c.88.

3. This act shall take effect immediately.

Approved July 30, 1993.

CHAPTER 218

AN ACT transferring the powers, functions and duties of the bureau of fire safety in the Department of Community Affairs to the Division of Fire Safety, amending the title of P.L.1983, c.382, amending and supplementing the body of P.L.1983, c.382, and amending P.L.1989, c.42 and P.L.1991, c.433.

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

1. The title of P.L.1983, c.382 is amended to read as follows:

Title amended.

An act establishing a Division of Fire Safety and a fire safety commission in the Department of Community Affairs, transferring the Office of State Fire Marshal to the Division of Fire Safety, and providing an appropriation therefor.

2. Section 1 of P.L.1983, c.382 (C.52:27D-25a) is amended to read as follows:

C.52:27D-25a Definitions.

1. As used in this act:
 - a. "Division" means the Division of Fire Safety established by section 2 of this act.
 - b. "Commissioner" means the Commissioner of the Department of Community Affairs.
 - c. "Department" means the Department of Community Affairs.
 - d. "Commission" means the fire safety commission established by section 5 of this act.

3. Section 2 of P.L.1983, c.382 (C.52:27D-25b) is amended to read as follows:

C.52:27D-25b Division of Fire Safety.

2. There is established in the Department of Community Affairs a Division of Fire Safety. Within three months of the effective date of this act, after reviewing the functions and duties required of the division by this act and transferred to the division by this act, the commissioner shall prepare an organizational plan of the division.

4. Section 3 of P.L.1983, c.382 (C.52:27D-25c) is amended to read as follows:

C.52:27D-25c Director.

3. The division shall be under the immediate oversight of a director who shall administer and enforce the provisions of this act, subject to the supervision and control of the commissioner, and who shall perform other duties as directed by the commissioner or as provided by law. The director shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve at the pleasure of the Governor. The fire safety commission shall advise the commissioner on the qualifications of the director.

5. Section 4 of P.L.1983, c.382 (C.52:27D-25d) is amended to read as follows:

C.52:27D-25d Powers, duties.

4. In addition to any other powers and duties invested in it by law or by the commissioner, the division shall:

- a. Provide staff support for the work of the fire safety commission and its advisory councils;
- b. Administer and enforce the "Uniform Fire Safety Act," established by P.L.1983, c.383 (C.52:27D-192 et al.);
- c. Implement training and education programs for the fire service and the public;
- d. Administer a fire incident reporting system;
- e. Conduct research and master planning for fire safety; and
- f. In conjunction with the Department of Labor and Department of Health, conduct investigations of fire incidents in which one or more firefighters suffer death or serious injury and identify those measures which may be required to prevent the future occurrence of deaths and serious injuries under similar circumstances and, in furtherance of any such investigation, the division may issue and enforce subpoenas to compel the testimony of any person who might have knowledge of any relevant matters and the production of any relevant documents. If any investigation conducted under this subsection results in the discovery of any violation of the provisions of the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.), the division, as an enforcing agency, may issue a written notice or order pursuant to that act. Any notice or order issued by the Division of Fire Safety pursuant to this subsection may be enforced under section 19 of P.L.1983, c.383 (C.52:27D-210) as a notice or order of the commissioner.

6. Section 6 of P.L.1983, c.382 (C.52:27D-25f) is amended to read as follows:

C.52:27D-25f Personnel transferred.

6. Pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.), personnel assigned to the Office of the State Fire Marshal in the Division of State Police in the Department of Law and Public Safety, together with all of its functions, powers and duties, are transferred to the Division of Fire Safety established by section 2 of this act in the Department of Community Affairs. The Department of Community Affairs shall reorganize the functions, duties and titles of the personnel transferred.

7. Section 1 of P.L.1989, c.42 (C.52:27D-25d1) is amended to read as follows:

C.52:27D-25d1 Public school fire data.

1. The Division of Fire Safety in the Department of Community Affairs, in consultation with the Department of Education, shall maintain a system for gathering data on all fires that occur in any public school building or on public school property.

8. Section 3 of P.L.1989, c.42 (C.52:27D-25d2) is amended to read as follows:

C.52:27D-25d2 Annual report on school fires.

3. Annually the Division of Fire Safety shall prepare a report summarizing the data collected on school fires and provide the report to the Commissioner of Education.

9. Section 4 of P.L.1991, c.433 (C.52:27D-25d3) is amended to read as follows:

C.52:27D-25d3 Burn patient arson registry, establishment; review.

4. a. In consultation with the Commissioner of Health and the Superintendent of the Division of State Police in the Department of Law and Public Safety, the Division of Fire Safety in the Department of Community Affairs shall establish and maintain a burn patient arson registry which shall contain the information from reports submitted pursuant to subsection b. of N.J.S.2C:58-8 and any other information deemed necessary by the director of the division to assist in the prevention and prosecution of the crime of arson and to provide an information source for arson research and analysis.

b. The director of the Division of Fire Safety in the Department of Community Affairs, the Superintendent of the Division of State Police in the Department of Law and Public Safety, the Commissioner of Health, two physicians or surgeons specializing in burn injuries from Saint Barnabas Burn Foundation appointed by the director of the foundation, and two physicians or surgeons specializing in burn injuries from the Burn Foundation of Philadelphia appointed by the director of the foundation shall meet at least once during every six month period. The group shall meet to discuss the status and operation of the burn patient arson registry and the quality of the information accumulated in the registry; assess the level of compliance with subsection b. of N.J.S.2C:58-8; identify additional factors for inclusion in paragraph (7) of

subsection b. of N.J.S.2C:58-8; and make recommendations for change in the operation of the registry.

10. Section 5 of P.L.1991, c.433 (C.52:27D-25d4) is amended to read as follows:

C.52:27D-25d4 Rules, regulations.

5. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the Commissioner of the Department of Community Affairs shall adopt rules and regulations necessary to effectuate the purposes of this act including, but not limited to, the transfer of information from the 24-hour toll free arson hotline established and maintained pursuant to section 6 of P.L.1991, c.433 (C.53:2-7), procedures for the submission of reports required under subsection b. of N.J.S.2C:58-8, the transmission of all reports to the Division of Fire Safety in the Department of Community Affairs, and procedures for notifying the appropriate enforcement agency, if necessary, to facilitate an arson investigation.

The form to be used for written reports submitted pursuant to subsection b. of N.J.S.2C:58-8 shall be developed in consultation with the Department of Health, the Superintendent of the Division of State Police and the physicians or surgeons of Saint Barnabas Burn Foundation and the Burn Foundation of Philadelphia appointed for the purposes of subsection b. of section 4 of P.L.1991, c.433 (C.52:27D-25d3).

C.52:27D-25h Transfer of bureau, functions, powers, duties to Division of Fire Safety.

11. The bureau of fire safety in the Division of Housing and Urban Renewal in the Department of Community Affairs, together with its functions, powers and duties, is transferred to the Division of Fire Safety in the Department of Community Affairs. All references in any law, order, rule, regulation, contract, document, judicial or administrative proceeding, or otherwise, to the bureau of fire safety in the Division of Housing and Urban Renewal in the Department of Community Affairs, or the supervisor thereof, shall mean the Division of Fire Safety in the Department of Community Affairs or the director thereof. All transfers shall be made pursuant to the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

12. This act shall take effect immediately.

Approved August 1, 1993.

CHAPTER 219

AN ACT concerning the penalties for certain motor vehicle related criminal offenses and amending N.J.S.2C:1-14, N.J.S.2C:12-1, N.J.S.2C:20-2, N.J.S.2C:29-2, N.J.S.2C:43-6 and P.L.1991, c.83.

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

1. N.J.S.2C:1-14 is amended to read as follows:

Definitions.

2C:1-14. In this code, unless a different meaning plainly is required:

- a. "Statute" includes the Constitution and a local law or ordinance of a political subdivision of the State;
- b. "Act" or "action" means a bodily movement whether voluntary or involuntary;
- c. "Omission" means a failure to act;
- d. "Conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;
- e. "Actor" includes, where relevant, a person guilty of an omission;
- f. "Acted" includes, where relevant, "omitted to act";
- g. "Person," "he," and "actor" include any natural person and, where relevant, a corporation or an unincorporated association;
- h. "Element of an offense" means (1) such conduct or (2) such attendant circumstances or (3) such a result of conduct as
 - (a) Is included in the description of the forbidden conduct in the definition of the offense;
 - (b) Establishes the required kind of culpability;
 - (c) Negatives an excuse or justification for such conduct;
 - (d) Negatives a defense under the statute of limitations; or
 - (e) Establishes jurisdiction or venue;
- i. "Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with (1) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (2) the existence of a justification or excuse for such conduct;
- j. "Reasonably believes" or "reasonable belief" designates a belief the holding of which does not make the actor reckless or criminally negligent;

k. "Offense" means a crime, a disorderly persons offense or a petty disorderly persons offense unless a particular section in this code is intended to apply to less than all three;

l. (Deleted by amendment, P.L.1991, c.91).

m. "Amount involved," "benefit," and other terms of value. Where it is necessary in this act to determine value, for purposes of fixing the degree of an offense, that value shall be the fair market value at the time and place of the operative act.

n. "Motor vehicle" shall have the meaning provided in R.S.39:1-1.

o. "Unlawful taking of a motor vehicle" means conduct prohibited under N.J.S.2C:20-10 when the means of conveyance taken, operated or controlled is a motor vehicle.

2. 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) and (2) 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

(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 or school administrator, teacher 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

(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.

Aggravated assault under subsections b. (1) and b. (6) is a crime of the second degree; under subsection b. (2) 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.

c. 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.

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. A person who commits a simple assault as defined in subsection a. of this section is guilty of a crime of the fourth degree if the

person acted, at least in part, with ill will, hatred or bias toward, and with a purpose to intimidate, an individual or group of individuals because of race, color, religion, sexual orientation, or ethnicity.

3. N.J.S.2C:20-2 is amended to read as follows:

Consolidation of theft offenses; grading; provisions applicable to theft generally.

2C:20-2. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally. a. Consolidation of Theft Offenses. Conduct denominated theft in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of the court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. Grading of theft offenses.

(1) Theft constitutes a crime of the second degree if:

(a) The amount involved is \$75,000.00 or more;

(b) The property is taken by extortion; or

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram.

(2) Theft constitutes a crime of the third degree if:

(a) The amount involved exceeds \$500.00 but is less than \$75,000.00;

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse or airplane;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the amount involved is less than \$75,000.00 or is undetermined and the quantity is one kilogram or less;

(d) It is from the person of the victim;

(e) It is in breach of an obligation by a person in his capacity as a fiduciary;

(f) It is by threat not amounting to extortion; or

(g) It is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant.

(3) Theft constitutes a crime of the fourth degree if the amount involved is at least \$200.00 but does not exceed \$500.00. If the amount involved was less than \$200.00 the offense constitutes a disorderly persons offense.

(4) The amount involved in a theft shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.

c. Claim of right. It is an affirmative defense to prosecution for theft that the actor:

- (1) Was unaware that the property or service was that of another;
- (2) Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
- (3) Took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.

d. Theft from spouse. It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

4. Section 1 of P.L.1991, c.83 (C.2C:20-2.1) is amended to read as follows:

C.2C:20-2.1 Additional penalties for theft or unlawful taking of motor vehicle.

1. a. In addition to any other disposition authorized by law, a person convicted under the provisions of this chapter of theft or unlawful taking of a motor vehicle shall be subject:

- (1) For the first offense, to a penalty of \$500.00 and to the suspension or postponement of the person's license to operate a motor vehicle over the highways of this State for a period of one year.
- (2) For a second offense, to a penalty of \$750.00 and to the suspension or postponement of the person's license to operate a motor vehicle over the highways of this State for a period of two years.
- (3) For a third or subsequent offense, to a penalty of \$1,000.00, and to the suspension or postponement of the person's license to operate a motor vehicle over the highways of this State for 10 years.

b. The suspension or postponement of the person's license to operate a motor vehicle pursuant to subsection a. of this section

shall commence on the day the sentence is imposed. In the case of any person who at the time of the imposition of 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 one year for a first offense, two years for a second offense or 10 years for a third offense calculated from the day 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.

Upon conviction the court shall collect forthwith the New Jersey driver's licenses of the person and forward such 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. That 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 the director who shall notify the appropriate officials in the 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.

c. All penalties provided for in this section shall be collected as provided for the collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4), and shall be distributed in accordance with the provisions of N.J.S.2C:64-6 as if the collected monies were the proceeds of property forfeited pursuant to the provisions of chapter 64. However, the distributed monies are to be used for law enforcement activities related to auto theft.

5. N.J.S.2C:29-2 is amended to read as follows:

Resisting arrest; eluding officer.

2C:29-2. Resisting Arrest; Eluding Officer.

a. A person is guilty of a disorderly persons offense if he purposely prevents a law enforcement officer from effecting a lawful arrest, except that he is guilty of a crime of the fourth degree if he:

1. Uses or threatens to use physical force or violence against the law enforcement officer or another; or
2. Uses any other means to create a substantial risk of causing physical injury to the public servant or another.

It is not a defense to a prosecution under this subsection that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance.

b. Any person, while operating a motor vehicle on any street or highway in this State, who knowingly flees or attempts to elude any police or law enforcement officer after having received any signal from such officer to bring the vehicle to a full stop commits a crime of the third degree; except that, a person is guilty of a crime of the second degree if the flight or attempt to elude creates a risk of death or injury to any person. For purposes of this subsection, there shall be a permissive inference that the flight or attempt to elude creates a risk of death or injury to any person if the person's conduct involves a violation of chapter 4 of Title 39 of the Revised Statutes. In addition to the penalty prescribed under this subsection or any other section of law, the court shall order the suspension of that person's driver's license for a period of not less than six months or more than two years.

In the case of a person who is at the time of the imposition of sentence 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. 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.

Upon conviction the court shall collect forthwith the New Jersey driver's licenses of the person and forward such 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. That 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 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 the director who shall notify the appropriate officials in the 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.

For the purposes of this subsection, it shall be a rebuttable presumption that the owner of a vehicle was the operator of the vehicle at the time of the offense.

6. N.J.S. 2C:43-6 is amended to read as follows:

Sentence of imprisonment for crime; ordinary terms; mandatory terms.

2C:43-6. Sentence of Imprisonment for Crime; Ordinary Terms; Mandatory Terms. a. Except as otherwise provided, a person who

has been convicted of a crime may be sentenced to imprisonment, as follows:

(1) 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 10 years and 20 years;

(2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;

(3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;

(4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

b. As part of a sentence for any crime, where the court is clearly convinced that the aggravating factors substantially outweigh the mitigating factors, as set forth in subsections a. and b. of 2C:44-1, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a., or one-half of the term set pursuant to a maximum period of incarceration for a crime set forth in any statute other than this code, during which the defendant shall not be eligible for parole; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. A person who has been convicted under 2C:39-4a. of possession of a firearm with intent to use it against the person of another, or of a crime under any of the following sections: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a firearm as defined in 2C:39-1f., 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, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

The minimum terms established by this section shall not prevent the court from imposing presumptive terms of imprisonment pursuant to 2C:44-1f. (1) except in cases of crimes of the fourth degree.

A person who has been convicted of an offense enumerated by this subsection and who used or possessed a firearm during its commission, attempted commission or flight therefrom and who

has been previously convicted of an offense involving the use or possession of a firearm as defined in 2C:44-3d., shall be sentenced by the court to an extended term as authorized by 2C:43-7c., notwithstanding that extended terms are ordinarily discretionary with the court.

d. The court shall not impose a mandatory sentence pursuant to subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless the ground therefor has 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 weapon used or possessed was a firearm. In making its finding, 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.

e. A person convicted of a third or subsequent offense involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any other provision of this code, or under any of the provisions of Title 54 of the Revised Statutes, or Title 54A of the New Jersey Statutes, as amended and supplemented, shall be sentenced to a term of imprisonment by the court. This shall not preclude an application for and imposition of an extended term of imprisonment under N.J.S.2C:44-3 if the provisions of that section are applicable to the offender.

f. A person convicted of manufacturing, distributing, dispensing or possessing with intent to distribute any dangerous substance or controlled substance analog under N.J.S.2C:35-5, of maintaining or operating a controlled dangerous substance production facility under N.J.S.2C:35-4, of employing a juvenile in a drug distribution scheme under N.J.S.2C:35-6, leader of a narcotics trafficking network under N.J.S.2C:35-3, or of distributing, dispensing or possessing with intent to distribute on or near school property or buses under section 1 of P.L.1987, c.101 (C.2C:35-7), who has been previously convicted of manufacturing, distributing, dispensing or possessing with intent to distribute a controlled dangerous substance or controlled substance analog, shall upon application of the prosecuting attorney be sentenced by the court to an extended term as authorized by subsection c. of N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily discretionary with the court. The term of imprisonment shall, except as may be provided in N.J.S.2C:35-12, 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, not less than seven years if the person is convicted of a violation of N.J.S.2C:35-6, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

The court shall not impose an extended term pursuant to this subsection unless the ground therefor has been established at a hearing. At the hearing, which may occur at the time of sentencing, the prosecutor shall establish the ground therefor by a preponderance of the evidence. In making its finding, 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.

For the purpose of this subsection, a previous conviction exists where the actor has at any time been convicted under chapter 35 of this title or Title 24 of the Revised Statutes or under any similar statute of the United States, this State, or any other state for an offense that is substantially equivalent to N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of P.L.1987, c.101 (C.2C:35-7).

g. Any person who has been convicted under subsection a. of N.J.S.2C:39-4 of possessing a machine gun or assault firearm with intent to use it against the person of another, or of a crime under any of the following sections: N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a., N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5, N.J.S.2C:35-5, who, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a machine gun or assault firearm 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 10 years for a crime of the first or second degree, five years for a crime of the third degree, or 18 months in the case of a fourth degree crime, during which the defendant shall be ineligible for parole.

The minimum terms established by this section shall not prevent the court from imposing presumptive terms of imprisonment pursuant to paragraph (1) of subsection f. of N.J.S.2C:44-1 for crimes of the first degree.

A person who has been convicted of an offense enumerated in this subsection and who used or possessed a machine gun or assault firearm during its commission, attempted commission or flight therefrom and who has been previously convicted of an offense involving the use or possession of any firearm as defined in subsection d. of N.J.S.2C:44-3, shall be sentenced by the court to an extended term as authorized by subsection d. of N.J.S.2C:43-7, notwithstanding that extended terms are ordinarily discretionary with the court.

h. The court shall not impose a mandatory sentence pursuant to subsection g. of this section, subsections d. of N.J.S.2C:43-7 or N.J.S.2C:44-3, unless the ground therefor has 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 weapon used or possessed was a machine gun or assault firearm. In making its finding, 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.

i. A person who has been convicted under paragraph (6) of subsection b. of 2C:12-1 of causing bodily injury while eluding 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. The minimum term established by this subsection shall not prevent the court from imposing a presumptive term of imprisonment pursuant to paragraph (1) of subsection f. of 2C:44-1.

7. This act shall take effect immediately.

Approved August 2, 1993.

CHAPTER 220

AN ACT concerning State assistance for the provision of law enforcement services, supplementing chapter 17B of Title 52 and chapter 43 of Title 2C of the Revised Statutes, amending P.L.1979, c.396 and P.L.1991, c.329 and making appropriations.

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

C.52:17B-159 Short title.

1. This act shall be known and may be cited as the "Safe and Secure Communities Act."

C.52:17B-160 Findings, declarations.

2. The Legislature finds and declares:

Crime and the fear of crime continue to grip far too many New Jersey residents. The volume of crimes committed in this State has risen by almost 10 percent over the past 10 years, according to the State Police, with violent crime comprising an ever-greater proportion of the total. A recent Statewide survey revealed that one of every seven New Jersey residents had been a crime victim within the past six months.

While crime has mushroomed, its face and scope have changed dramatically. Rural and suburban communities, formerly considered safe havens, are now plagued by crimes once thought confined to urban areas. In fact, offenses such as carjackings are as likely to occur in suburban shopping malls as in big cities.

As criminals have widened their base of operations, local efforts to cope with crime have been stretched dangerously thin by economic adversity. Cash-strapped communities across the State have laid off or restrained the hiring of police officers--the first line of defense against criminals. These communities also have been required to curtail expenditures for the equipment--cars, radios and body armor--necessary for effective police operations.

It is clearly time for action to deal with this epidemic of crime in a forceful, yet enlightened, manner. The Safe and Secure Communities Program, established by this act, will enable the police and the community to create a partnership designed to identify and develop strategies to impact crime and improve the quality of life by (1) combining State, federal and local resources to rapidly place 2,000 additional police officers in communities throughout the State, (2) providing hard-pressed municipalities with funding to purchase the equipment vital to effective police operations, (3) imposing an additional penalty on lawbreakers to establish a continuing source of funding to pay for these officers and equipment, (4) deploying the additional officers and equipment in a focused, community-oriented manner that will assure their maximum impact in combatting crime, and (5) initiating such other programs as will meet the particular needs of municipalities.

C.52:17B-161 Definitions.

3. As used in this act:

“Eligible municipality” means a municipality, which has a police department or force, in which the number of violent and nonviolent crimes per police officer exceeds 70% of the Statewide average of municipalities with a municipal police

department or force, as reported in the 1991 Uniform Crime Report published by the Division of State Police.

“Fringe benefits” means payments made by the employer for an employee’s retirement, social security, health and dental insurance, workers compensation, and unemployment, disability and survivor’s insurance.

“Fund” means the Safe Neighborhoods Services Fund established by section 5 of this act.

“Law enforcement equipment” or “equipment” means that equipment required for the provision of law enforcement services including, but not limited to, police cars, computers and peripheral equipment, police radios and other communications gear, weapons and body armor for which a grant is awarded pursuant to section 9 of this act.

“Law enforcement project” or “project” means a project employing police officers for which a grant is awarded pursuant to section 9 of this act.

“Other law enforcement personnel” means non-police employees who enhance a project’s law enforcement capacity by performing paperwork and related support services, thereby allowing police officers to devote more time to direct community policing duties.

“Program” means the “Safe and Secure Communities Program” established by this act.

C.52:17B-162 Objectives provided for by act.

4. It is the purpose of this act to provide assistance to municipalities for law enforcement projects which accomplish the following objectives as warranted by the needs of the community:

- a. Policing in a community-oriented manner through an emphasis on the use of foot patrols, personal interaction between police officers and residents, and participation in community crime prevention programs;
- b. Targeting law enforcement activities toward the specific needs of persons who live or work in a particular neighborhood, such as children, senior citizens or merchants;
- c. Encouraging resident involvement in activities that contribute to crime prevention, including citizen patrols, safe houses, neighborhood watch groups, and crime prevention educational programs;
- d. Reducing the incidence of criminal behavior, such as drug trafficking or youth gang activity, that disrupts the normal functioning of a community;

e. Implementing the Violent Offenders Removal Program to identify and expeditiously apprehend violent criminals who operate within a targeted area; and

f. Developing other innovative strategies which hold promise for preventing or reducing crime within a defined neighborhood or with respect to a particular demographic group within the municipality.

C.52:17B-163 "Safe Neighborhoods Services Fund," created.

5. a. There is created in the Department of the Treasury a non-lapsing fund entitled the "Safe Neighborhoods Services Fund." The fund shall be the depository for the assessments collected pursuant to section 11 of this act, for any State appropriations, federal grants received pursuant to subsection c. of this section, or other moneys provided to carry out the purposes of this act and for the interest earned on these deposits. The fund shall be administered by the State Treasurer.

b. Of the moneys deposited in the fund, 75% shall be available for approved law enforcement projects and 25% shall be available for the purchase of law enforcement equipment.

c. Notwithstanding the provisions of any law to the contrary, any federal funding received by the State, or for which the State is currently eligible or becomes eligible, for purposes within the purview of this act shall be deposited into the fund.

d. In no event shall moneys deposited in the fund be used to defray the cost of administering this act, except as provided in subsection e. of section 10 of this act.

C.52:17B-164 Grant provisions, applications.

6. a. An eligible municipality may apply to the Attorney General for a grant from the fund to pay the initial salaries of police officers and other law enforcement personnel deployed in a law enforcement project which is designed to meet the objectives of this act. A municipality which receives a grant for a project shall be responsible for paying the fringe benefits of all police officers or other law enforcement personnel hired, which shall be deemed the local cash match. A municipality shall further agree, as a condition of a grant awarded pursuant to this act, not to reduce its regular complement of police officers and other law enforcement personnel during the grant period.

b. Applications for project grants shall be made in a manner prescribed by the Attorney General. The grant application shall describe the municipality's need for grant funding, the purpose and duration of the proposed project, how the funding will be

used to further the objectives stated in section 4 of this act, and the indicators by which progress in achieving these objectives and the project's purpose will be measured.

C.52:17B-165 Police equipment grant application.

7. Any municipality which has a police department or force may apply to the Attorney General for a grant to purchase law enforcement equipment. Application shall be made in a manner prescribed by the Attorney General and shall include information on the type, amount, intended use, estimated cost and need for the equipment requested. A municipality which receives an equipment grant shall contribute a cash match of no less than 25% of the grant amount.

C.52:17B-166 Grant application evaluation, ranking.

8. The Attorney General shall evaluate and rank project grant applications submitted by eligible municipalities with reference to the municipality's realistic opportunity to achieve the objectives specified in section 4 of this act. In evaluating the applications, the Attorney General shall give additional weight to applications which:

- a. Propose cooperative policing agreements between two or more municipalities pursuant to P.L.1973, c.208 (C.40:8A-1 et al.) or P.L.1952, c.72 (C.40:48B-1 et seq.);
- b. Provide evidence of a project planning process which has involved residents of the proposed project areas and institutions and groups active in these areas;
- c. Provide for the re-employment of police officers who have been laid off by the municipality for budgetary reasons prior to March 1, 1993;
- d. Clearly delineate project outcome goals that are both time-lined and measurable;
- e. Maximize the use of funding and resources other than those provided by the program;
- f. Provide for the mobilization of residents as volunteer participants;
- g. Where practicable, provide for the employment of related law enforcement personnel to perform paperwork and related support services in order to free up police officers for community policing duties; and
- h. Provide for maximum program accountability according to procedures promulgated by the Attorney General pursuant to section 10 of this act.

C.52:17B-167 Safe and Secure Communities Selection Panel, created; duties.

9. a. There is hereby created the Safe and Secure Communities Selection Panel. The panel shall consist of eight members selected as follows: three members of the Senate appointed by the President of the Senate, no more than two of whom shall be of the same political party; three members of the General Assembly appointed by the Speaker of the General Assembly, no more than two of whom shall be of the same political party; and the Attorney General and the Commissioner of Community Affairs, who shall serve ex officio. Appointed members shall serve the duration of the current legislative term.

b. The Attorney General on or before September 1 and March 1 of each year shall forward to the panel his recommendations for the award of program grants pursuant to subsection b. of section 10 of this act.

c. The panel shall review applications for program grants and, after considering the recommendations of the Attorney General and the criteria established by this act, select grant recipients.

d. No more than 50% of the total dollar amount of grants awarded from the fund shall be allocated to municipalities eligible to receive state aid pursuant to subsections a., b. and c. of section 1 of P.L.1985, c.170 (C.52:27D-118.11).

e. No municipality shall receive a grant exceeding \$200,000 for a project or \$50,000 for equipment. However, if funding remains after all approved projects and law enforcement equipment grants have been funded in any program year, funding in excess of the amount specified in this subsection may be awarded to grantees upon recommendation of the Attorney General and approval by the Safe and Secure Communities Selection Panel.

f. Initial grants under this program will be awarded only during the first two program years following the effective date of this act.

g. A municipality which receives a grant for a project under this act may receive funding in subsequent years to continue that project. Approval of a continuation grant shall be contingent upon certification by the Attorney General that the project is effectively meeting the objectives of this act. A municipality that is eligible to receive an initial grant under this act shall be eligible to receive continuation funding.

C.52:17B-168 Guidelines; program grant schedule, procedure.

10. a. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Attorney General shall

promulgate guidelines for the receipt of program funds, procedures to ensure grantee accountability, and any other rules and regulations necessary to carry out the purposes of this act.

b. Program grants shall be awarded in two annual cycles. Grants to municipalities with a fiscal year starting January 1 shall be announced no later than October 30 and shall be awarded on January 1. Grants to municipalities with a fiscal year starting July 1 shall be announced no later than April 30 and shall be awarded on July 1.

c. The Attorney General shall promptly notify eligible municipalities regarding the program established by this act and make available to them grant applications and guidelines within 30 days of this act's effective date.

d. Notwithstanding any law or regulation to the contrary, a municipality may expend grant moneys in the local budget year in which they are received.

e. Of the moneys deposited into the fund, not more than \$375,000 shall be allocated to the Attorney General to enable the Division of Criminal Justice to provide technical and operational assistance to grantees, which shall include (1) assistance in implementing an effective community policing program, including training and the development of operational plans, schedules and strategies, and (2) coordination of and assistance with violent offender removal programs.

C.2C:43-3.2 Assessments for Safe Neighborhoods Services.

11. a. (1) In addition to any other fine, fee or assessment imposed, any person convicted of a crime, disorderly or petty disorderly persons offense or violation of R.S.39:4-50 shall be assessed \$75 for each conviction.

(2) In addition to any term or condition that may be included in an agreement for supervisory treatment pursuant to N.J.S.2C:43-13 or imposed as a term or condition of conditional discharge pursuant to section 3 of P.L.1987, c.106 (C.2C:36A-1), a participant in either program shall be required to pay an assessment of \$75.

b. All assessments provided for in this section shall be collected as provided for collection of fines and restitutions in section 3 of P.L.1979, c.396 (C.2C:46-4) and shall be forwarded to the Department of the Treasury as provided in subsection c. of this section.

c. All money collected pursuant to this section shall be forwarded to the Department of the Treasury to be deposited into the Safe Neighborhoods Services Fund created by section 5 of this act.

12. Section 3 of P.L. 1979, c.396 (C.2C:46-4) is amended to read as follows:

C.2C:46-4 Fines, assessments, restitution; collection; disposition.

3. a. All fines, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) and restitution shall be collected as follows:

(1) All fines, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) and restitution imposed by the Superior Court or otherwise imposed at the county level, shall be collected by the county probation department except when such fine, assessment or restitution is imposed in conjunction with a custodial sentence to a State correctional facility in which event such fine, assessment or restitution shall be collected by the Department of Corrections. An adult prisoner of a State correctional institution who has not paid an assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or restitution shall have the assessment or restitution deducted from any income the inmate receives as a result of labor performed at the institution or on any type of work release program or, pursuant to regulations promulgated by the Commissioner of the Department of Corrections, from any personal account established in the institution for the benefit of the inmate.

(2) All fines, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) and restitution imposed by a municipal court shall be collected by the municipal court clerk except if such fine, assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), or restitution is ordered as a condition of probation in which event it shall be collected by the county probation department.

b. Except as provided in subsection c. with respect to fines imposed on appeals following convictions in municipal courts, all fines imposed by the Superior Court or otherwise imposed at the county level, shall be paid over by the officer entitled to collect same to:

(1) The county treasurer with respect to fines imposed on defendants who are sentenced to and serve a custodial term, including a term as a condition of probation, in the county jail, workhouse or penitentiary except where such county sentence is served concurrently with a sentence to a State institution; or

(2) The State Treasurer with respect to all other fines.

c. All fines imposed by municipal courts on defendants convicted of crimes, disorderly persons offenses and petty disorderly

persons offenses, and all fines imposed following conviction on appeal therefrom, and all forfeitures of bail shall be paid over by the officer entitled to collect same to the treasury of the municipality wherein the municipal court is located.

In the case of an intermunicipal court, fines shall be paid into the municipal treasury of the municipality in which the offense was committed, and costs, fees, and forfeitures of bail shall be apportioned among the several municipalities to which the court's jurisdiction extends according to the ratios of the municipalities' contributions to the total expense of maintaining the court.

d. All assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) shall be forwarded and deposited as provided in that section.

e. All mandatory Drug Enforcement and Demand Reduction penalties imposed pursuant to N.J.S.2C:35-15 shall be forwarded and deposited as provided for in that section.

f. All forensic laboratory fees assessed pursuant to N.J.S.2C:35-20 shall be forwarded and deposited as provided for in that section.

g. All restitution ordered to be paid to the Violent Crimes Compensation Board pursuant to N.J.S.2C:44-2 shall be forwarded to the Board for deposit in the Violent Crimes Compensation Board Account.

h. All assessments imposed pursuant to section 11 of P.L.1993, c.220 (C.2C:43-3.2) shall be forwarded and deposited as provided in that section.

13. Section 13 of P.L.1991, c.329 (C.2C:46-4.1) is amended to read as follows:

C.2C:46-4.1 Application of moneys collected; priority.

13. Moneys that are collected in satisfaction of any assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), or in satisfaction of restitution or fines imposed in accordance with the provisions of Title 2C of the New Jersey Statutes, shall be applied in the following order:

- a. first, in satisfaction of all assessments imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1);
- b. second, in satisfaction of any restitution ordered;
- c. third, in satisfaction of all assessments imposed pursuant to section 11 of P.L.1993, c.220 (C.2C:43-3.2);

- d. fourth, in satisfaction of any forensic laboratory fee assessed pursuant to N.J.S.2C:35-20;
- e. fifth, in satisfaction of any mandatory Drug Enforcement and Demand Reduction penalty assessed pursuant to N.J.S.2C:35-15; and
- f. sixth, in satisfaction of any fine.

14. There is appropriated from the General Fund \$15,000,000 to the Department of the Treasury for deposit into the Safe Neighborhoods Services Fund. There is also appropriated \$150,000 from the General Fund to the Department of Personnel for administration and scoring of police officer examinations for jurisdictions operating under Title 11A of the New Jersey Statutes.

15. This act shall take effect immediately and subsection a. of section 9 shall expire after two years.

Approved August 2, 1993.

CHAPTER 221

AN ACT establishing the crime of carjacking and supplementing Title 2C of the New Jersey Statutes.

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

C.2C:15-2 Carjacking defined.

1. a. Carjacking defined. A person is guilty of carjacking if in the course of committing an unlawful taking of a motor vehicle, as defined in R.S.39:1-1, or in an attempt to commit an unlawful taking of a motor vehicle he:

- (1) inflicts bodily injury or uses force upon an occupant or person in possession or control of a motor vehicle;
- (2) threatens an occupant or person in control with, or purposely or knowingly puts an occupant or person in control of the motor vehicle in fear of, immediate bodily injury;
- (3) commits or threatens immediately to commit any crime of the first or second degree; or

(4) operates or causes said vehicle to be operated with the person who was in possession or control or was an occupant of the motor vehicle at the time of the taking remaining in the vehicle.

An act shall be deemed to be "in the course of committing an unlawful taking of a motor vehicle" if it occurs during an attempt to commit the unlawful taking of a motor vehicle or during an immediate flight after the attempt or commission.

b. Grading. Carjacking is a crime of the first degree and upon conviction thereof a person may, notwithstanding the provisions of paragraph (1) of subsection a. of N.J.S.2C:43-6, be sentenced to an ordinary term of imprisonment between 10 and 30 years. A person convicted of carjacking shall be sentenced to a term of imprisonment and that term of imprisonment shall include the imposition of a minimum term of at least five years during which the defendant shall be ineligible for parole.

2. This act shall take effect immediately.

Approved August 4, 1993.

CHAPTER 222

AN ACT concerning crime victims' testimony at parole hearings and amending P.L.1979, c.441.

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

1. Section 11 of P.L.1979, c.441 (C.30:4-123.55) is amended to read as follows:

C.30:4-123.55 Review of reports; certification of parole release; denial; time limitations; waiver; proceedings.

11. a. Prior to the parole eligibility date of each adult inmate, a designated hearing officer shall review the reports required by section 10 of this act, and shall determine whether there is a basis for denial of parole in the preparole report or the inmate's statement, or an indication, reduced to writing, that additional information providing a basis for denial of parole would be developed or produced at a hearing. If the hearing officer determines

that there is no basis in the preparole report or the inmate's statement for denial of parole and that there is no additional relevant information to be developed or produced at a hearing, he shall at least 60 days prior to the inmate's parole eligibility date recommend in writing to the assigned member of the board panel that parole release be granted.

b. If the assigned member of the board panel or in the case of an inmate sentenced to a county penal institution, the assigned member concurs in the hearing officer's recommendation, he shall certify parole release pursuant to section 15 of this act as soon as practicable after the eligibility date and so notify the inmate and the board. In the case of an inmate sentenced to a county penal institution the board shall certify parole release or deny parole as provided by this section, except with regard to time periods for notice and parole processing which are authorized by or otherwise adopted pursuant to subsection g. of section 7 of P.L.1979, c.441 (C.30:4-123.51). If the designated hearing officer does not recommend release on parole or if the assigned member does not concur in a recommendation of the designated hearing officer in favor of release, then the parole release of an inmate in a county penal institution shall be treated under the provisions of law otherwise applicable to an adult inmate. In the case of an inmate sentenced to a county penal institution, the performance of public service for the remainder of the term of the sentence shall be a required condition of parole, where appropriate.

c. If the hearing officer or the assigned member determines that there is a basis for denial of parole, or that a hearing is otherwise necessary, the hearing officer or assigned member shall notify the appropriate board panel and the inmate in writing of his determination, and of a date for a parole consideration hearing. The board panel shall notify the victim of the crime, if the crime for which the inmate is incarcerated was a crime of the first or second degree, or the victim's nearest relative if the crime was murder, as appropriate, who was previously contacted by the board and who has indicated his intention to the board to testify at the hearing, of the opportunity to testify or submit written statements at the hearing. Said hearing shall be conducted by the appropriate board panel at least 30 days prior to the eligibility date. At the hearing, which shall be informal, the board panel shall receive as evidence any relevant and reliable documents or in person testimony, including that of the victim of the crime or the members of the family of a murder victim if the victim or a family member so desires. If a victim of a

crime or the relative of a murder victim chooses not to testify personally at the hearing, the victim or relative may elect to present testimony to a senior hearing officer designated by the board panel. The senior hearing officer shall prepare a report or a transcript of the testimony for presentation to the board panel at the hearing. All such evidence not classified as confidential pursuant to rules and regulations of the board or the Department of Corrections shall be disclosed to the inmate and the inmate shall be permitted to rebut such evidence and to present evidence on his own behalf. The decision of the board panel shall be based solely on the evidence presented at the hearing.

d. At the conclusion of the parole consideration hearing, the board panel shall either (1) certify the parole release of the inmate pursuant to section 15 of this act as soon as practicable after the eligibility date and so notify the inmate and the board, or (2) deny parole and file with the board within 30 days of the hearing a statement setting forth the decision, the particular reasons therefor, except information classified as confidential pursuant to rules and regulations of the board or the Department of Corrections, a copy of which statement shall be served upon the inmate together with notice of his right to appeal to the board.

e. Upon request by the hearing officer or the inmate, the time limitations contained in sections 10 and 11 may be waived by the appropriate board panel for good cause.

f. Notwithstanding the provision of any other law to the contrary, if an inmate incarcerated for murder is recommended for parole by the assigned board member or the appropriate board panel, parole shall not be certified until a majority of the full parole board, after conducting a hearing, concurs in that recommendation. The board shall notify the victim's family of that hearing and family members shall be afforded the opportunity to testify in person or to submit written statements. The provisions of this subsection shall not apply to an inmate who has his parole revoked and is returned to custody pursuant to the provisions of section 19 of P.L.1979, c.441 (C.30:4-123.63).

2. This act shall take effect immediately.

Approved August 5, 1993.

CHAPTER 223

AN ACT concerning sentencing for multiple offenses and amending N.J.S.2C:44-5.

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

1. N.J.S.2C:44-5 is amended to read as follows:

Multiple sentences; concurrent and consecutive terms.

2C:44-5. Multiple Sentences; Concurrent and Consecutive Terms.

a. Sentences of imprisonment for more than one offense. When multiple sentences of imprisonment are imposed on a defendant for more than one offense, including an offense for which a previous suspended sentence or sentence of probation has been revoked, such multiple sentences shall run concurrently or consecutively as the court determines at the time of sentence, except that:

(1) The aggregate of consecutive terms to a county institution shall not exceed 18 months; and

(2) Not more than one sentence for an extended term shall be imposed.

There shall be no overall outer limit on the cumulation of consecutive sentences for multiple offenses.

b. Sentences of imprisonment imposed at different times. When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for an offense committed prior to the former sentence, other than an offense committed while in custody:

(1) The multiple sentences imposed shall so far as possible conform to subsection a. of this section; and

(2) Whether the court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the permissible aggregate length of the term or terms remaining to be served; and

(3) When a new sentence is imposed on a prisoner who is on parole, the balance of the parole term on the former sentence shall not be deemed to run during the period of the new imprisonment unless the court determines otherwise at the time of sentencing.

c. Sentence of imprisonment for offense committed while on parole. When a defendant is sentenced to imprisonment for an offense committed while on parole in this State, such term of

imprisonment and any period of reimprisonment that the parole board may require the defendant to serve upon the revocation of his parole shall run consecutively unless the court orders these sentences to run concurrently.

d. Multiple sentences of imprisonment in other cases. Except as otherwise provided in this section, multiple terms of imprisonment shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.

e. Calculation of concurrent and consecutive terms of imprisonment.

(1) When terms of imprisonment run concurrently, the shorter terms merge in and are satisfied by discharge of the longest term.

(2) When terms of imprisonment run consecutively, the terms are added to arrive at an aggregate term to be served equal to the sum of all terms.

f. Suspension of sentence or probation and imprisonment; multiple terms of suspension and probation. When a defendant is sentenced for more than one offense or a defendant already under sentence is sentenced for another offense committed prior to the former sentence:

(1) The court shall not sentence to probation a defendant who is under sentence of imprisonment, except as authorized by paragraph (2) of subsection b. of N.J.S.2C:43-2;

(2) Multiple periods of suspension or probation shall run consecutively, unless the court orders these sentences to run concurrently from the date of the first such disposition;

(3) When a sentence of imprisonment in excess of one year is imposed, the service of such sentence shall satisfy a suspended sentence on another count or prior suspended sentence or sentence to probation, unless the suspended sentence or probation has been violated in which case any imprisonment for the violation shall run consecutively; and

(4) When a sentence of imprisonment of one year or less is imposed, the period of a suspended sentence on another count or a prior suspended sentence or sentence to probation shall run during the period of such imprisonment, unless the suspended sentence or probation has been violated in which case any imprisonment for the violation shall run consecutively.

g. Offense committed while under suspension of sentence or probation. When a defendant is convicted of an offense committed while under suspension of sentence or on probation and such suspension or probation is not revoked:

(1) If the defendant is sentenced to imprisonment in excess of one year, the service of such sentence shall not satisfy the prior suspended sentence or sentence to probation, unless the court determines otherwise at the time of sentencing;

(2) If the defendant is sentenced to imprisonment of one year or less, the period of the suspension or probation shall not run during the period of such imprisonment; and

(3) If sentence is suspended or the defendant is sentenced to probation, the period of such suspension or probation shall run concurrently with or consecutively to the remainder of the prior periods, as the court determines at the time of sentence.

h. Offense committed while released pending disposition of a previous offense. When a defendant is sentenced to imprisonment for an offense committed while released, with or without bail, pending disposition of a previous offense, the term of imprisonment shall run consecutively to any sentence of imprisonment imposed for the previous offense, unless the court, in consideration of the character and conditions of the defendant, finds that imposition of consecutive sentences would be a serious injustice which overrides the need to deter such conduct by others.

2. This act shall take effect immediately.

Approved August 5, 1993.

CHAPTER 224

AN ACT concerning community trusts and amending P.L.1985, c.424.

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

1. Section 3 of P.L.1985, c.424 (C.3B:11-21) is amended to read as follows:

C.3B:11-21 Purposes, policies.

3. This act shall be liberally construed and applied to promote its underlying purposes and policies, which are among others to:

a. encourage the orderly establishment of community trusts for the benefit of persons with severe chronic disabilities;

b. ensure that community trusts are administered properly and that the managing boards of the trusts are free from conflicts of interest, except that an unpaid member of the managing board of a nonprofit corporation provider shall not be deemed to be in conflict as a member of the managing board of a trust;

c. facilitate sound administration of trust funds for persons with severe chronic disabilities by allowing family members and others to pool resources in order to make professional management investment more efficient;

d. provide parents of persons with severe chronic disabilities peace of mind in knowing that a means exists to ensure that the interests of their children who have severe chronic disabilities are properly looked after and managed after the parents die or become incapacitated;

e. help make guardians available for persons with severe chronic disabilities who are incompetent, when no other family member is available for this purpose;

f. encourage the availability of private resources to purchase for persons with severe chronic disabilities goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those which are not available from other sources;

g. encourage the inclusion, as beneficiaries of community trusts, of persons who lack resources and whose families are indigent, in a way that does not diminish the resources available to other beneficiaries whose families have contributed to the trust; and

h. remove the disincentives which discourage parents and others from setting aside funds for the future protection of persons with severe chronic disabilities by ensuring that the interests of beneficiaries in community trusts are not considered assets or income which would disqualify them from any governmental or charitable entitlement program with an economic means test.

2. Section 4 of P.L.1985, c.424 (C.3B:11-22) is amended to read as follows:

C.3B:11-22 Definitions.

4. As used in this act:

a. "Beneficiary" means any person with a severe chronic disability who has qualified as a member of the community trust program and who has the right to receive those services and benefits of the community trust program as provided in this act.

b. "Board" means the board of trustees or the group of persons vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.

c. "Community trust" means a nonprofit organization which offers the following services:

(1) administration of special trust funds for persons with severe chronic disabilities;

(2) follow-along services;

(3) guardianship for persons with severe chronic disabilities who are incompetent, when no other immediate family member or friend is available for this purpose; and

(4) advice and counsel to persons who have been appointed as individual guardians of the persons or estates of persons with severe chronic disabilities.

d. "Follow-along services" means those services offered by community trusts which are designed to insure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, participation in the development of individualized plans being made by service providers for the beneficiary, and other similar services consistent with the purposes of this act.

e. "Severe chronic disability" means a physical or mental impairment which is expected to give rise to a long-term need for specialized health, social, and other services, and which makes the person with such a disability dependent upon others for assistance to secure these services.

f. "Trustee" means any member of the board of a corporation, formed for the purpose of managing a community trust, whether that member is designated as a trustee, director, manager, governor, or by any other title.

g. "Surplus trust funds" means funds accumulated in the trust from contributions made on behalf of an individual beneficiary, which, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary's lifetime, including the beneficiary's share of administrative costs, and of any amounts provided to a remainderman.

3. Section 6 of P.L.1985, c.424 (C.3B:11-24) is amended to read as follows:

C.3B:11-24 Board.

6. Every community trust shall be administered by a board. The board shall be comprised of no less than nine and no more than 21 members, at least one-third of whom shall be parents or relatives of persons with severe chronic disabilities. Board members shall be selected, to the maximum extent possible, from geographic areas throughout the area served by the trust.

The certificate of incorporation filed with the Secretary of State pursuant to Title 15A of the New Jersey Statutes shall, in addition to the requirements set forth in that Title, demonstrate that the requirements of this section have been met.

4. Section 14 of P.L.1985, c.424 (C.3B:11-32) is amended to read as follows:

C.3B:11-32 Community trust irrevocable.

14. A community trust for persons with severe chronic disabilities is irrevocable, but the trustees in their sole discretion may provide compensation for any contribution to the trust to any trustor who, upon good cause, withdraws a beneficiary designated by the trustor from the trust, or if it becomes impossible to fulfill the conditions of the trust with regard to an individual beneficiary for reasons other than the death of the beneficiary. The trustor may also designate one or more remaindermen at the time the contribution is made to the trust.

5. This act shall take effect immediately.

Approved August 6, 1993.

CHAPTER 225

AN ACT concerning the prevention, detection and treatment of breast cancer, supplementing Title 26 of the Revised Statutes and making an appropriation therefor.

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

C.26:2-168 Breast cancer informational booklets provided by Department of Health.

1. The Department of Health, in consultation with the New Jersey Division of the American Cancer Society, the Radiological

Society of New Jersey and the American College of Obstetricians and Gynecologists, New Jersey Chapter, shall prepare an informational booklet in English and Spanish which describes, in a manner easily understandable by the patient, recognized dietary and lifestyle implications for the prevention of breast cancer, advantages and methods of early detection, and the risks and procedures involved with alternative methods of breast cancer treatment. The department shall make a supply of booklets available to all licensed health care facilities engaged in the diagnosis or treatment of breast cancer, facilities which provide mammography services and physicians engaged in the diagnosis or treatment of breast cancer, and social services agencies that primarily serve women.

C.45:9-22.3a Distribution of booklet by attending physician.

2. An attending physician shall give all patients who are referred for a routine mammogram or who are under the physician's care for treatment of breast cancer a copy of the informational booklet on breast cancer prepared by the Department of Health pursuant to section 1 of P.L.1993, c.225 (C.26:2-168).

C.45:9-22.3b Immunity from civil liability for physician.

3. A physician who fails to provide a copy of the information booklet on breast cancer to a patient shall not be liable for a civil penalty because of his failure to do so.

4. There is appropriated to the Department of Health from the General Fund \$35,000 to carry out the purposes of this act.

5. This act shall take effect on the 90th day after enactment.

Approved August 6, 1993.

CHAPTER 226

AN ACT concerning the sales tax on race horses.

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

C.54:32B-7.1 Sales tax imposed on sale of certain race horses.

1. Notwithstanding the provisions of section 3 of P.L.1966, c.30 (C.54:32B-3) to the contrary, the sale of race horses through claiming races within the State shall be subject to the sales tax

imposed by that section only on that portion of the total purchase price that exceeds the highest of any prior purchase prices paid for the same horse within the State during the same calendar year. If no previous purchases have been made within the calendar year, the full purchase price shall be subject to the sales tax. Each holder of a permit to conduct horse racing in this State pursuant to P.L.1940, c.17 (C.5:5-22 et seq.) shall maintain and make available to the Division of Taxation, upon reasonable request, an accurate and detailed list of those sales.

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

Approved August 6, 1993.

CHAPTER 227

AN ACT providing for the payment of the costs of hepatitis inoculations for certain health and safety workers, amending N.J.S.2C:64-6 and P.L.1992, c.40, supplementing Title 26 of the Revised Statutes and making an appropriation.

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

1. N.J.S.2C:64-6 is amended to read as follows:

Disposal of forfeited property.

2C:64-6. Disposal of Forfeited Property. a. Property which has been forfeited shall be destroyed if it can serve no lawful purpose or it presents a danger to the public health, safety or welfare. All other forfeited property or any proceeds resulting from the forfeiture and all money seized pursuant to this chapter shall become the property of the entity funding the prosecuting agency involved and shall be disposed of, distributed, appropriated and used in accordance with the provisions of this chapter.

The prosecutor or the Attorney General, whichever is prosecuting the case, shall divide the forfeited property, any proceeds resulting from the forfeiture or any money seized pursuant to this chapter with any other entity where the other entity's law enforce-

ment agency participated in the surveillance, investigation, arrest or prosecution resulting in the forfeiture, in proportion to the other entity's contribution to the surveillance, investigation, arrest or prosecution resulting in the forfeiture, as determined in the discretion of the prosecutor or the Attorney General, whichever is prosecuting the case. Notwithstanding any other provision of law, such forfeited property and proceeds shall be used solely for law enforcement purposes, and shall be designated for the exclusive use of the law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture.

The Attorney General is authorized to promulgate rules and regulations to implement and enforce the provisions of this act.

b. For a period of two years from the date of enactment of P.L.1993, c.227 (C.26:4-100.13 et al.), 10% of the proceeds obtained by the Attorney General under the provisions of subsection a. of this section shall be deposited into the Hepatitis Inoculation Fund established pursuant to section 2 of P.L.1993, c.227 (C.26:4-100.13).

c. Beginning two years from the date of enactment of P.L.1993, c.227 (C.26:4-100.13 et al.) and in subsequent years, 5% of the proceeds obtained by the Attorney General under the provisions of subsection a. of this section shall be deposited into the Hepatitis Inoculation Fund established pursuant to section 2 of P.L.1993, c.227 (C.26:4-100.13).

C.26:4-100.13 "Hepatitis Inoculation Fund," created; eligibility.

2. a. There is created in the Department of Health the "Hepatitis Inoculation Fund," hereinafter referred to as the "fund." The fund shall be a separate, nonlapsing, revolving account and shall be administered by the Division of Epidemiology and Communicable Disease Control in the Department of Health and all moneys deposited in the fund pursuant to section 1 of P.L.1993, c.227 (N.J.S.2C:64-6) shall be used for the provision of hepatitis inoculations to the following persons, in order of eligibility, and for related administrative costs:

(1) volunteer emergency medical technicians-ambulance and volunteer firefighters;

(2) all other emergency medical technicians-ambulance, firefighters and police officers in squads or departments with less than 100 members; and

(3) all other emergency medical technicians-ambulance, firefighters and police officers.

The Director of the Division of Epidemiology and Communicable Disease Control shall promulgate rules and regulations in order to effectuate the purposes of this fund.

b. A person whose medical insurance policy pays for the full cost of the hepatitis inoculation shall not receive payment for an inoculation administered pursuant to subsection a. of this section. A person whose medical insurance policy pays for a portion of the cost of hepatitis inoculation may be reimbursed for the unpaid portion from the Hepatitis Inoculation Fund.

3. The following provision in section 1 of P.L.1992, c.40 (on page 85 of Senate, No. 1000(1R)) is amended to read as follows:

GENERAL FUND
DIRECT STATE SERVICES
66 DEPARTMENT OF LAW AND PUBLIC SAFETY
10 Public Safety and Criminal Justice
19 Central Planning, Direction and Management

Except as provided under section 1 of P.L.1993, c.227 (N.J.S.2C:64-6), any funds obtained through seizure, forfeiture, or abandonment pursuant to any federal or State statutory or common law and the proceeds of the sale of any such confiscated property or goods are appropriated for law enforcement purposes designated by the Attorney General; provided however, that the expenditures thereof shall be subject to the approval of the Director of the Division of Budget and Accounting and the Joint Budget Oversight Committee.

4. The following provision is added in section 1 of P.L.1992, c.40 (on page 46 of Senate Bill No. 1000(1R)), to read as follows:

GENERAL FUND
DIRECT STATE SERVICES
46 DEPARTMENT OF HEALTH
20 Physical and Mental Health
21 Health Services

There are appropriated from the Hepatitis Inoculation Fund established pursuant to section 2 of P.L.1993, c.227 (C.26:4-100.13) such sums as may be required for the costs of hepatitis inoculations administered to eligible persons pursuant to section 2 of P.L.1993, c.227 (C.26:4-100.13).

5. This act shall take effect immediately.

Approved August 6, 1993.

CHAPTER 228

AN ACT concerning change of name and amending N.J.S.2A:52-1 and N.J.S.2A:52-2.

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

1. N.J.S.2A:52-1 is amended to read as follows:

Action for change of name.

2A:52-1. Any person may institute an action in Superior Court, for authority to assume another name. The complaint for a change of name shall be accompanied by a sworn affidavit stating the applicant's name, date of birth, social security number, whether or not the applicant has ever been convicted of a crime, and whether any criminal charges are pending against him and, if such convictions or pending charges exist, shall provide such details in connection therewith sufficient to readily identify the matter referred to. The sworn affidavit shall also recite that the action for a change of name is not being instituted for purposes of avoiding or obstructing criminal prosecution or for avoiding creditors or perpetrating a criminal or civil fraud. If criminal charges are pending, the applicant shall serve a copy of the complaint and affidavit upon any State or county prosecuting authority responsible for the prosecution of any pending charges. A person commits a crime of the fourth degree if he knowingly gives or causes to be given false information under this section.

2. N.J.S.2A:52-2 is amended to read as follows:

Effect of judgment, copy to State Bureau of Identification.

2A:52-2. Such person, from and after the day specified therefor in the judgment in the action, shall be known by the name which, by the judgment, he is authorized to assume, and by no other. The judgment for change of name shall include the applicant's social security number and date of birth. The clerk of the court shall forward a copy of the judgment to the State Bureau of Identification in the Division of State Police if the person has been convicted of a crime or if there are criminal charges pending against him.

3. This act shall take effect immediately.

Approved August 6, 1993.

CHAPTER 229

AN ACT concerning funding for compulsive gambling treatment programs, amending P.L.1977, c.110 and supplementing Title 26 of the Revised Statutes.

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

1. Section 145 of P.L.1977, c.110 (C.5:12-145) is amended to read as follows:

C.5:12-145 Casino revenue fund.

145. Casino revenue fund. a. There is hereby created and established in the Department of the Treasury a separate special account to be known as the "Casino Revenue Fund," into which shall be deposited all revenues from the tax imposed by section 144 of this act; the investment alternative tax imposed by section 3 of P.L.1984, c.218 (C.5:12-144.1); and all penalties levied and collected by the commission pursuant to P.L.1977, c.110 (C.5:12-1 et seq.) and the regulations promulgated thereunder, except that the first \$600,000 in penalties collected each fiscal year shall be paid into the General Fund for appropriation by the Legislature to the Department of Health, \$500,000 of which is to provide funds to the Council on Compulsive Gambling of New Jersey and \$100,000 of which is to provide funds for compulsive gambling treatment programs in the State. In the event that less than \$600,000 in penalties are collected, the Department of Health shall determine the allocation of funds between the Council and the treatment programs eligible under the criteria developed pursuant to section 2 of P.L.1993, c.229 (C.26:2-169).

b. The commission shall require at least monthly deposits by the licensee of the tax established pursuant to subsection a. of section 144 of P.L.1977, c.110 (C.5:12-144), at such times, under such conditions, and in such depositories as shall be prescribed by the State Treasurer. The deposits shall be deposited to the credit of the Casino Revenue Fund. The commission may require a monthly report and reconciliation statement to be filed with it on or before the 10th day of each month, with respect to gross revenues and deposits received and made, respectively, during the preceding month.

c. Moneys in the Casino Revenue Fund shall be appropriated exclusively for reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of eligible senior citizens

and disabled residents of the State, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents, as shall be provided by law. On or about March 15 and September 15 of each year, the State Treasurer shall publish in at least 10 newspapers circulating generally in the State a report accounting for the total revenues received in the Casino Revenue Fund and the specific amounts of money appropriated therefrom for specific expenditures during the preceding six months ending December 31 and June 30.

C.26:2-169 Criteria for compulsive gambling treatment programs; grants.

2. The Department of Health shall develop criteria which a treatment program for compulsive gamblers shall meet in order to become eligible for a grant from the funds made available for such treatment programs pursuant to section 145 of P.L.1977, c.110 (C.5:12-145). The department shall also develop a formula for the distribution of available funds which will result in an equitable distribution among the programs which meet the eligibility criteria and apply for grants.

The department shall submit a report to the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or their successors, describing the criteria developed pursuant to this section and detailing the amount of grants distributed and the names of the programs receiving grants. The department shall submit the report annually to both committees.

3. This act shall take effect on July 1, 1993.

Approved August 6, 1993.

CHAPTER 230

AN ACT concerning the operation of certain vessels, amending P.L.1954, c.236 and P.L.1952, c.157 and repealing section 6 P.L.1986, c.39.

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

1. Section 19 of P.L.1954, c.236 (C.12:7-34.19) is amended to read as follows:

C.12:7-34.19 Penalties for operating vessel under influence of liquor, drugs.

19. a. No person shall operate a vessel on non-tidal waters while under the influence of intoxicating liquor, a narcotic, hallucinogenic, or habit-producing drug or with a blood alcohol concentration of 0.10% or more by weight of alcohol.

No person shall permit another who is under the influence of intoxicating liquor, a narcotic, hallucinogenic, or habit-producing drug or who has a blood alcohol concentration of 0.10% or more by weight of alcohol to operate any vessel owned by the person or in his custody or control.

As used in this section, "vessel" means a power vessel as defined in section 1 of P.L.1954, c.236 (C.12:7-34.1) or a vessel which is 12 feet or greater in length.

Any person who violates this section shall be subject to the following:

(1) For a first offense, to a fine of not less than \$250.00 nor more than \$400.00; and to the revocation of the right to operate a vessel on the waters of this State for a period of 12 months from the date of conviction and to the forfeiting of the right to operate a motor vehicle over the highways of this State for a period of three months.

(2) For a second offense, to a fine of not less than \$500.00 nor more than \$1,000.00; to the performance of community service for a period of 30 days, in the form and on the terms as the court deems appropriate under the circumstances; to imprisonment for a term of not less than 48 hours nor more than 90 days, which shall not be suspended or served on probation; and to the revocation of the right to operate a vessel on the waters of this State for a period of two years after the date of conviction and to the forfeiting of the right to operate a motor vehicle over the highways of this State for a period of six months.

(3) For a third or subsequent offense, to a fine of \$1,000.00; to imprisonment for a term of not less than 180 days, except that the court may lower this term for each day not exceeding 90 days during which the person performs community service, in the form and on the terms as the court deems appropriate under the circumstances; and to the revocation of the right to operate a vessel on the waters of this State for a period of 10 years after the date of conviction and to the forfeiting of the right to operate a motor vehicle over the highways of this State for a period of two years.

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 Director of the Division of Motor Vehicles. In the event that a person convicted under this section is the holder of any out-of-state motor vehicle driver's license, the court shall not collect the license but shall immediately notify the Director of the Division of Motor Vehicles, 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.

b. 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 against a second or subsequent offender. If a second offense occurs more than 10 years after the first offense, the court shall treat a 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 a third conviction as a second offense for sentencing purposes.

c. If a court imposes a term of imprisonment under this section, the person may be sentenced to the county jail, to the workhouse of the county where the offense was committed, or to an inpatient rehabilitation program approved by the Director of the Division of Alcoholism and Drug Abuse in the Department of Health.

d. In the case of any person who at the time of the imposition of 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 three months 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 of any offense defined in this section, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement. A second offense shall result in the suspension or postponement of the person's right to operate a motor vehicle for six months. A third or subsequent offense shall result in the suspension or postponement of the person's right to operate a motor vehicle for two years. The court before whom any person is convicted of or adjudicated delinquent for a viola-

tion shall collect forthwith the New Jersey driver's license or licenses of the person and forward such 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. That 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 the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privilege in this State.

e. In addition to any other requirements provided by law, a person convicted under this section shall satisfy the screening, evaluation, referral program and fee requirements of the Division of Alcoholism's Intoxicated Driving Programs Unit. A fee of \$80.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order to defray the costs of the screening, evaluation and referral by the Intoxicated Driving Programs Unit. Failure to satisfy this requirement shall result in the immediate forfeiture of the right to operate a vessel on the waters of this State or the continuation of revocation until the requirements are satisfied.

2. Section 3 of P.L.1952, c.157 (C.12:7-46) is amended to read as follows:

C.12:7-46 Penalties for operating vessel under the influence.

3. a. No person shall operate a vessel on tidal waters while under the influence of intoxicating liquor, a narcotic, hallucinogenic, or habit-producing drug or with a blood alcohol concentration of 0.10% or more by weight of alcohol. No person shall permit another who is under the influence of intoxicating liquor, a narcotic, hallucinogenic or habit-producing drug, or who has a blood alcohol concentration of 0.10% by weight of alcohol, to operate any vessel owned by the person or in his custody or control.

As used in this section, "vessel" means a power vessel as defined by section 2 of P.L.1962, c.73 (C.12:7-34.37) or a vessel which is 12 feet or greater in length.

A person who violates this section shall be subject to the following:

(1) For a first offense, to a fine of not less than \$250.00 nor more than \$400.00; and to the revocation of the right to operate a vessel on the waters of this State for a period of 12 months from the date of conviction and to the forfeiting of the right to operate a motor vehicle over the highways of this State for a period of three months.

(2) For a second offense, to a fine of not less than \$500.00 nor more than \$1,000.00; to the performance of community service for a period of 30 days, in the form and on the terms as the court deems appropriate under the circumstances; and to imprisonment for a term of not less than 48 hours nor more than 90 days, which shall not be suspended or served on probation; and to the revocation of the right to operate a vessel on the waters of this State for a period of two years after the date of conviction and to the forfeiting of the right to operate a motor vehicle over the highways of this State for a period of six months.

(3) For a third or subsequent offense, to a fine of \$1,000.00; to imprisonment for a term of not less than 180 days, except that the court may lower this term for each day not exceeding 90 days during which the person performs community service, in the form and on the terms as the court deems appropriate under the circumstances; and to the revocation of the right to operate a vessel on the waters of this State for a period of 10 years from the date of conviction and to the forfeiting of the right to operate a motor vehicle over the highways of this State for a period of two years.

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 Director of the Division of Motor Vehicles. In the event that a person convicted under this section is the holder of any out-of-State

motor vehicle driver's license, the court shall not collect the license but shall notify forthwith the Director of the Division of Motor Vehicles, 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.

b. 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 against a second or subsequent offender. If a second offense occurs more than 10 years after the first offense, the court shall treat a 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 a third conviction as a second offense for sentencing purposes.

c. If a court imposes a term of imprisonment under this section, the person may be sentenced to the county jail, to the workhouse of the county where the offense was committed, or to an inpatient rehabilitation program approved by the Director of the Division of Motor Vehicles and the Director of the Division of Alcoholism and Drug Abuse in the Department of Health.

d. In the case of any person who at the time of the imposition of 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 three months 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 of any offense defined in this section, the revocation, suspension, or postponement period imposed herein shall commence as of the date of termination of the existing revocation, suspension or postponement. A second offense shall result in the suspension or postponement of the person's right to operate a motor vehicle for six months. A third or subsequent offense shall result in the suspension or postponement of the person's right to operate a motor vehicle for two years. The court before whom any person is convicted of or adjudicated delinquent for a violation shall collect forthwith the New Jersey driver's license or licenses of the person and forward such 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. That 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 the licensing jurisdiction. The court shall, however, in accordance with the provisions of this section, revoke the person's non-resident driving privilege in this State.

e. In addition to any other requirements provided by law, a person convicted under this section shall satisfy the screening, evaluation, referral program and fee requirements of the Division of Alcoholism's Intoxicated Driving Programs Unit. A fee of \$80.00 shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the convicted person in order to defray the costs of the screening, evaluation and referral by the Intoxicated Driving Programs Unit. Failure to satisfy this requirement shall result in the immediate forfeiture of the right to operate a vessel on the waters of this State or the continuation of revocation until the requirements are satisfied.

Repealer.

3. Section 6 of P.L.1986, c.39 (C.12:7-54) is repealed.

4. This act shall take effect on the first day of the sixth month after enactment.

Approved August 6, 1993.

CHAPTER 231

AN ACT concerning the Department of Transportation, amending P.L.1967, c.268 and supplementing Title 27 of the Revised Statutes.

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

C.27:1A-5.13 Powers of commissioner concerning park-and-ride facilities.

1. The Commissioner of Transportation may, pursuant to subsection (b) of section 5 of P.L.1966, c.301 (C.27:1A-5):

a. Acquire by purchase, condemnation, lease, gift or otherwise, on terms and conditions and in the manner the commissioner deems proper, any land or property, real or personal, tangible or intangible, for the purpose of establishing a park-and-ride lot or facility;

b. Plan, design, construct, equip, operate, improve or maintain, either directly or by contract with any public or private entity, a park-and-ride lot or facility;

c. Approve a park-and-ride lot or facility for use in whole or in part for public park-and-ride purposes, provided that there is a written agreement between the commissioner and the owner of the lot or facility in which the owner agrees to the use of the lot or facility for public park-and-ride purposes.

Nothing in this section may be construed as affecting the power or authority of any public or private entity to establish a park-and-ride lot or facility without the approval of the commissioner to the extent otherwise provided or permitted by law.

C.27:1A-5.14 Defense, indemnification of owner, operator.

2. The Commissioner of Transportation, or the commissioner's designee, may agree to defend and indemnify any person, who, pursuant to a written agreement with the commissioner entered into pursuant to subsection c. of section 1 of this amendatory and supplementary act, owns, operates, or maintains an approved park-and-ride lot or facility, against claims, causes of action, demands, costs or judgments against that person arising as a direct result of the operation, ownership or maintenance of that approved park-and-ride lot or facility. The commissioner is authorized to reach an agreement to defend and indemnify a person upon the terms and limitations the commissioner deems reasonable and appropriate.

An agreement to defend and indemnify pursuant to this section does not bar, reduce, limit or affect any remedies which the commissioner may have to enforce the commissioner's agreement or to assert a claim for damages to which the commissioner may be entitled arising out of the person's failure to perform the agreement, or for the recovery of funds expended for the defense of a person if the defense was undertaken in response to a claim or cause of action brought against the person which is proven to have arisen from gross negligence, willful misconduct, fraud, intentional tort, bad faith, or criminal conduct.

No one other than the person owning, operating, or maintaining the approved park-and-ride lot or facility pursuant to an agreement with the commissioner has the right to enforce any agreement for defense or indemnification between that person and the commissioner.

3. Section 1 of P.L.1967, c.268 (C.27:7-21.4) is amended to read as follows:

C.27:7-21.4 Leasing property acquired for transportation purposes; provision for termination of lease.

1. Any real or personal property heretofore or hereafter acquired by the Department of Transportation for a transportation or transportation related program or project may be leased by the Commissioner of Transportation to any person or public body or agency on a temporary basis. The commissioner shall include a provision in the lease which would allow the termination of the lease upon written notice thereof to the lessee prior to the conclusion of the term of the lease in accordance with a minimum period of time for that notice, such provision having been the subject of negotiation between the commissioner and the prospective lessee, so as to ensure that the occupancy of the property does not in any manner interfere with or delay the transportation program or project for which the property is needed. No person, public body or agency shall remain in possession of premises beyond the conclusion of the term of the lease or, in the case of a notice of termination, the date fixed by the commissioner in the notice. If the lessee remains past conclusion of the term of the lease or beyond the date fixed in the notice of termination, the department may institute a summary proceeding in the Superior Court, for an order to show cause as to why the department should not be granted immediate possession of the leased property and the property be vacated of its occupants.

4. This act shall take effect immediately.

Approved August 6, 1993.

CHAPTER 232

AN ACT concerning the administration and enforcement of the State taxes paid and collected by alcoholic beverage licensees, amending R.S.33:1-26 and N.J.S.54:50-9.

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

1. 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 Uni-

form 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.

Any request for relief under this section shall be accompanied by a nonreturnable filing fee of \$100.00 payable to the director.

2. R.S.54:50-9 is amended to read as follows:

Certain officers entitled to examine records.

54:50-9. Nothing herein contained shall be construed to prevent:

- a. The delivery to a taxpayer or his duly authorized representative of a copy of any report or any other paper filed by him pursuant to the provisions of this subtitle or of any such State tax law;
- b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;
- c. The commissioner, in his discretion and subject to reasonable conditions imposed by him, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;
- d. The inspection by the Attorney-General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;
- e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the commissioner, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other state, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the commissioner, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law;

h. The furnishing by the Director of the Division of Taxation to the State agency responsible for administering the Child Support Enforcement program pursuant to Title IV-D of the federal Social Security Act, Pub. L. 93-647 (42 U.S.C. § 651 et seq.), with the names, home addresses and social security numbers of all absent parents who are certified by that agency as being required to pay child support, upon request by the State agency and pursuant to procedures and in a form prescribed by the director.

i. The furnishing by the Director of the Division of Taxation to the Board of Public Utilities any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be necessary for the administration of P.L.1991, c.184 (C.54:30A-18.6 et al.).

j. The furnishing by the Director of the Division of Taxation to the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be relevant, in the discretion of the director, in any proceeding conducted for the issuance, suspension or revocation of any license authorized pursuant to Title 33 of the Revised Statutes.

3. This act shall take effect immediately

Approved August 6, 1993.

CHAPTER 233

AN ACT concerning the testing of operators of power vessels involved in certain boating accidents and amending P.L.1986, c.39.

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

1. Section 7 of P.L.1986, c.39 (C.12:7-55) is amended to read as follows:

C.12:7-55 Implied consent.

7. a. (1) A person who operates a power vessel or a vessel which is 12 feet or greater in length on the tidal or non-tidal waters of this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood, except that the taking of samples shall be made in accordance with the provisions of this amendatory and supplementary act and at the request of the State Marine Police Force or a law enforcement officer who has reasonable grounds to believe that the person has been operating a vessel in violation of the provisions of section 19 of P.L.1954, c.236 (C.12:7-34.19) or section 3 of P.L.1952, c.157 (C.12:7-46).

(2) Whenever an operator has been involved in an accident resulting in death, bodily injury or property damage, an officer shall consider that fact along with all other facts and circumstances in determining under paragraph (1) of this subsection whether there are reasonable grounds to believe a person is operating a vessel in violation of the provisions of section 19 of P.L.1954, c.236 (C.12:7-34.19) or section 3 of P.L.1952, c.157 (C.12:7-46).

b. A record of the taking of the sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy shall be furnished or made available to the person so tested, upon his request.

c. In addition to the samples taken and tests made at the direction of the State Marine Police Force or a law enforcement officer, the person tested shall be permitted to have samples taken and chemical tests of his breath, urine or blood made by a person or physician of his own selection.

d. The State Marine Police Force or a law enforcement officer shall inform the person tested of his rights under subsections b. and c. of this section.

e. No chemical test, as provided in this section, or specimen necessary for a test, may be made or taken forcibly and against physical resistance thereto by the defendant. The State Marine Police Force or a law enforcement officer shall, however, inform the person arrested of the consequences of refusing to submit to the test, in accordance with section 9 of this amendatory and supplementary act. A standard statement, prepared by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety, shall be read by the State Marine Police Force or a law enforcement officer to the person under arrest.

2. This act shall take effect immediately, but shall apply only to accidents occurring on and after the effective date.

Approved August 6, 1993.

CHAPTER 234

AN ACT concerning capital and surplus requirements for certain insurance companies and amending and supplementing various parts of Title 17 of the Revised Statutes.

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

1. R.S.17:17-1 is amended to read as follows:

Kinds of insurance.

17:17-1. Ten or more persons may form a corporation for the purpose of making of any kinds of insurance, as follows:

a. Against direct or indirect loss or damage to property, including loss of use or occupancy by fire, smoke; smudge; lightning; tempest on land, including windstorm, tornado and cyclone; earthquake; collapse of buildings; hail; frost or snow; weather or climatic conditions, including excess or deficiency of moisture, flood, rain or drought, rising of the waters of the ocean or its tributaries; bombardment; invasion; insurrection; riot; civil war or commotion; military or usurped power; vandalism or malicious mischief; striking employees; explosion, whether fire ensues or not, except explosion of steam boilers and flywheels; and arising from the use of elevators, aircraft,

automobiles or other vehicles; against loss or damage by insects or disease to farm crops or products and loss of rental value of land used in producing the crops or products.

b. Against any kinds of loss or damage to: Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, including all kinds of automobile and aircraft insurance (excepting insurance against loss by reason of bodily injury to the person), as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidence of debt, valuable papers, bottomry and respondentia interests, and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment or reshipment incident thereto, including marine builder's risk and all personal property floater risks, and to person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of the insurance (but not including life insurance or surety bonds) but, except as herein specified, not against loss by reason of bodily injury to the person.

c. Upon the lives or health of persons, and every insurance appertaining thereto, and to grant, purchase or dispose of annuities.

d. Against bodily injury or death by accident, and upon the health of persons, including a funeral benefit to an amount not exceeding \$100 or against loss or damage to automobiles or motor vehicles, or to wagons or vehicles propelled by a horse or team of any description, resulting from collision with moving or stationary objects, against perils to property arising from the use of elevators, aircraft, automobiles or other motor vehicles, or against loss by legal liability for damage to persons or property (including, if the insured is a state or a political subdivision of a state or a municipal corporate instrumentality of one or more states, loss by voluntary payments made by the insured under circumstances where the insured would have legal liability if it were a private corporation) resulting from collision of automobiles, air-

craft, or motor vehicles, or of wagons or vehicles propelled by a horse or team with moving or stationary objects.

e. Against loss or damage resulting from accident to or injury suffered by any person for which loss or damage the insured is liable, including, if the insured is a state or a political subdivision of a state or a municipal corporate instrumentality of one or more states, loss or damage resulting from accident to or injury suffered by any person for which loss or damage the insured would be liable if it were a private corporation.

f. Against damage to property of the insured or loss of life or damage to the person or property of others for which the insured is liable (including, if the insured is a state or a political subdivision of a state or a municipal corporate instrumentality of one or more states, loss of life or damage to the person or property of others for which the insured would be liable if it were a private corporation), caused by the explosion of steam boilers, pipes, engines, motors and machinery connected therewith or operated thereby.

g. Against loss from the defaults of persons in positions of trust, public or private, or against loss or damage on account of neglect or breaches of duty or obligations guaranteed by the insurer; and against loss by banks, bankers, brokers, financial or moneyed corporations or associations, of any bills of exchange, notes, checks, drafts, acceptances of drafts, bonds, securities, evidences of debt, deeds, mortgages, documents, gold or silver, bullion, currency, money, platinum and other precious metals, refined or unrefined and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, and also against loss resulting from damage, except by fire, to the insured's premises, furnishings, fixtures, equipment, safes and vaults therein caused by burglary, robbery, hold-up, theft or larceny, or attempt thereat. No such indemnity indemnifying against loss of any property as specified herein shall indemnify against the loss of any such property occurring while in the mail or in the custody or possession of a carrier for hire for the purpose of transportation, except for the purpose of transportation by an armored motor vehicle accompanied by one or more armed guards.

h. Against loss or damage on account of encumbrances upon or defects in titles to real property. Any company organized or operating under this paragraph shall have the right, in addition to its other powers, to make searches, abstracts, examine titles to real property and chattels, and procure and furnish information in relation thereto.

i. Against loss from bad debts, commonly known as credit insurance.

j. Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism or malicious mischief, or any one or more of such hazards; and against any and all kinds of loss or destruction of or damage to moneys, securities, currencies, scrip, coins, bullion, bonds, notes, drafts, acceptances of drafts, bills of exchange and other valuable papers or documents, except while in the custody or possession of and being transported by a carrier for hire or in the mail; and against loss or damage to automobiles and aircraft by burglary, larceny, or theft, vandalism or malicious mischief, confiscation or wrongful conversion, disposal or concealment, whether held under conditional sale contract or subject to chattel mortgages, or otherwise, or any one or more of such hazards.

k. Against loss of and damage to glass, including lettering and ornamentation thereon, and the frame in which the glass is set resulting from breakage of the insured glass.

l. Against loss or damage by water or other fluid to any goods or premises arising from the breaking or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, or of other conduits or containers, or by water entering through leaks or openings in buildings, and of water pipes and against accidental injury to such sprinklers, pumps, conduits, containers, water pipes and other apparatus; including loss of use or occupancy of the property so damaged.

m. Upon the lives of horses, cattle and other livestock or against loss by theft of any such property or both.

n. Against loss or damage to property by smoke or smudge, or both.

o. Any specified kinds of insurance not included in any of the foregoing subsections and which are proper subjects of insurance.

Any company, which, by its charter, is authorized to make insurance against loss or damage to property caused by fire, lightning, or tempest on land, may, without amending its charter, be authorized by the Commissioner of Insurance to transact all of the kinds of insurance described in subsections a., b. and l. of this section, if it is possessed of the capital stock and surplus or cash premiums required by R.S.17:17-6 and R.S.17:17-7; and any company which, by its charter, is authorized to make insurance against loss or damage to private dwelling property and contents thereof under subsection a. of this section, may, without amending its charter, be permitted to transact all of the kinds of insurance described in subsections f., k. and l. of this section,

limited, however, to extending fire or casualty insurance policies to provide such coverages on private dwellings and contents thereof, if it possesses the capital and surplus or cash premiums required by R.S.17:17-6 and R.S.17:17-7; or any company which, by its charter, is authorized to make any kinds of insurance described in subsections a. through o. of this section, inclusive, except subsection c. of this section, may, without amending its charter, if it is possessed of a capital stock of at least \$3,500,000 and surplus of at least \$2,750,000 or, if a mutual company, it is possessed of net cash assets (excess of allowable assets over all liabilities) of at least \$6,250,000, be authorized by the Commissioner of Insurance to transact any other kind or kinds of insurance that may be proper subjects of insurance, except upon the lives of persons or the granting of annuities.

2. R.S.17:17-6 is amended to read as follows:

Capital and surplus required for stock company; temporary waiver.

17:17-6. No stock insurance company organized under chapters 17 to 33 of Title 17 of the Revised Statutes (17:17-1 et seq.), shall commence or continue business unless it has a capital stock of at least the greater of \$500,000, actually paid in cash, or capital stock of \$200,000, actually paid in cash, for each kind of insurance more than one which it may transact as specified in subsections a., b., f., i., j., k., l., m., n. and o. of R.S.17:17-1; \$1,000,000 for the kinds of insurance specified in subsection e. of R.S.17:17-1; and \$500,000 for the kinds specified in subsection g. of R.S.17:17-1; and, in addition, a surplus, actually paid in cash, of at least the greater of \$250,000 or \$100,000 for each kind of insurance more than one which it may transact as specified in subsections a., b., f., i., j., k., l., m., n. and o. of R.S.17:17-1; \$1,000,000 for the kinds of insurance specified in subsection e. of R.S.17:17-1; and \$750,000 for the kinds specified in subsection g. of R.S.17:17-1.

A stock insurance company authorized to transact the kinds of business specified in R.S.17:17-1 or eligible to insure surplus lines risks pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) as of the effective date of this 1993 amendatory and supplementary act may apply to the commissioner for a temporary waiver of the applicable capital and surplus requirements set forth in this section. The commissioner may, in his discretion, temporarily waive the applicable capital and surplus requirements for that insurance company for a period of no more than five years,

except that the insurance company shall remain subject to capital and surplus requirements of no less amounts than those in effect immediately prior to the effective date of this 1993 amendatory and supplementary act. In considering such a temporary waiver, the commissioner shall consider the size of the insurance company's deficiency in meeting the applicable capital and surplus requirements; the adequacy of the insurance company's financial plan to meet the applicable capital and surplus requirements; and any other factors deemed appropriate by the commissioner.

3. R.S.17:17-7 is amended to read as follows:

Assets required for mutual company; temporary waiver.

17:17-7. No mutual insurance company organized under chapters 17 to 33 of Title 17 of the Revised Statutes (§17:17-1 et seq.), shall commence business until bona fide applications have been made for insurance with the company of the kind or kinds it may transact, as specified in R.S.17:17-3, and premiums thereon have been paid into the company in cash in such sum, which, together with any other funds that may be legally available, will result in the company having unencumbered assets over and above all required reserves and other liabilities of at least 50 percent of the capital and surplus required of a stock company transacting the same kind or kinds of insurance. A company shall not commence or continue the business of liability insurance, as comprised in subsection e. of R.S.17:17-1 unless it has net cash assets of at least \$2,000,000 and shall not commence or continue the writing of fidelity and surety bonds as comprised in subsection g. of R.S.17:17-1 unless it has net cash assets of at least \$1,250,000.

A mutual insurance company authorized to do the kind of business specified in R.S.17:17-1 or eligible to insure surplus lines risks pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) as of the effective date of this 1993 amendatory and supplementary act may apply to the commissioner for a temporary waiver of the applicable capital and surplus requirements set forth in this section. The commissioner may, in his discretion, temporarily waive the applicable capital and surplus requirements for that insurance company for a period of no more than five years, except that the insurance company shall remain subject to capital and surplus requirements of no less amounts than those in effect immediately prior to the effective date of this 1993 amendatory and supplementary act. In considering such a temporary waiver, the

commissioner shall consider the size of the insurance company's deficiency in meeting the applicable capital and surplus requirements; the adequacy of the insurance company's financial plan to meet the applicable capital and surplus requirements; and any other factors deemed appropriate by the commissioner.

4. R.S.17:18-9 is amended to read:

Maximum amounts of individual risks.

17:18-9. No insurance company transacting business in this State shall expose itself to any loss on any one risk or hazard in an amount exceeding ten per centum (10%) of its net assets as of December 31 next preceding, except that for the kind of business specified in subsection e. of R.S.17:17-1, the exposure to any loss on any one risk or hazard shall not exceed five per centum (5.0%) of the insurer's net assets as of December 31 next preceding. With respect to the kind of business specified in subsection e. of R.S.17:17-1, the commissioner may revise the limit between five per centum (5.0%) and ten per centum (10.0%) of net assets exposed on any one risk or hazard as deemed necessary based on an assessment of the lines and classifications of business written and on the individual company's financial condition. So much of a risk or hazard as shall be reinsured in a company that satisfies the requirements set forth in P.L.1993, c.243 (C.17:51B-1 et al.) or as to which credit for reinsurance is allowed pursuant to the law of the ceding insurer's state or country of domicile, which law is substantially similar to P.L.1993, c.243 (C.17:51B-1 et al.) shall not be considered part of the risk.

Any mutual fire insurance company operated without purpose of profit and which confines its business principally to sprinklered risks and which pays no commissions or brokerages for the acquisition of its business may expose itself to loss on any one risk or hazard to an amount not exceeding ten per centum (10%) of the sum of its net assets and its gross premium or premium deposits in force. No insurance company transacting business in this State and having net assets of less than \$2,000,000 shall issue any policy of insurance on any one risk or hazard for an amount in excess of double the amount to which it can legally expose itself, as above provided, unless the reinsurance contracts have been submitted to and approved by the commissioner.

This section shall not apply to policies of life insurance, marine insurance, including transportation and inland navigation, title or mortgage insurance, or workmen's compensation or employer's liability insurance.

C.17:17-15 Rules, regulations on solvency standards.

5. The commissioner may promulgate rules and regulations with respect to solvency standards and tests, including, but not limited to: the ratio of policyholder surplus to net premiums; the ratio of policyholder surplus to net claim reserves; the concentration of the insurer's exposures, geographic or otherwise; and transactions which could affect the companies' solvency.

C.17:17-16 Increase in amount of required capital, surplus.

6. The commissioner may increase the amount of capital or surplus required of any insurer pursuant to R.S.17:17-6 or R.S.17:17-7, or subsequently revise or redetermine such increase, using appropriate methods and procedures established by rules and regulations adopted by the commissioner in order to provide adequate protection against risks affecting the insurer's financial condition that are not adequately or fully covered by its reserves or other assets, but under no circumstance shall an insurer's capital or surplus be less than the capital or surplus required pursuant to R.S.17:17-6 or, if applicable, R.S.17:17-7; provided, however, that any increase of capital or surplus pursuant to this section, including any increase required by a subsequent revision or redetermination, shall be made only after a formal departmental hearing, on a record, unless that hearing is waived by the affected insurer. All matters pertaining to a hearing or to an increase of capital or surplus pursuant to this section shall be confidential and not subject to subpoena or public inspection, except to the extent that the commissioner finds release of information necessary to protect the public. The hearing shall be initiated within 20 days after written notice to the insurer. Any decision regarding an increase of capital or surplus pursuant to this section, including an increase required by a subsequent revision or redetermination, shall contain findings specifying the factors deemed significant in regard to the particular insurer, and shall set forth the reasons supporting the increase of capital or surplus ordered by the commissioner. In determining any increase, revision or redetermination in the amount of capital or surplus, the commissioner shall consider the risks of:

a. Increases or decreases in the frequency and severity of losses under normal operating conditions, as well as increases or decreases in those values, beyond or below the levels contemplated by the rates that it charged for insurance and beyond or below those reasonably expected under normal conditions;

b. Increases or decreases in expenses under normal operating conditions, as well as increases or decreases in those values, beyond or below the levels contemplated by the rates that it charged for insurance and beyond or below those reasonably expected under normal conditions;

c. Increases or decreases in the value of, or return on, invested assets under normal operating conditions, as well as increases or decreases in those values, beyond or below those levels anticipated under normal conditions;

d. Changes in economic, social and market conditions that could adversely or favorably affect the financial condition of the insurer, including conditions that would make liquidity more or less important than contemplated and would prevent or facilitate timely investments or force or prohibit untimely sale of assets; and

e. Any other contingencies, including reinsurance and unfunded or extracontractual obligations, which may affect the insurer's financial condition.

C.17:17-17 Factors for determining increase, revision, redetermination of capital, surplus.

7. In determining any increase, revision or redetermination in the capital or surplus of an insurer pursuant to the provisions of section 6 of P.L.1993, c.234 (C.17:17-16), the commissioner shall take into account the following factors:

a. Methods and techniques used to measure risk exposure and variability;

b. The information available relating to the magnitude of the various risks described in section 6 of P.L.1993, c.234 (C.17:17-16);

c. The extent to which the risks described in section 6 of P.L.1993, c.234 (C.17:17-16) are independent or interrelated, and whether any dependency is direct or inverse;

d. The insurer's financial history, projections of profits or losses and other operational characteristics;

e. The extent to which the insurer has provided protection against contingencies in ways other than the establishment of surplus including, but not limited to: redundancy of premiums; margin in reserves and liabilities; adjustability of contracts pursuant to the terms of the contracts; voluntary or mandatory investment valuation reserves; reinsurance; the use of conservative actuarial assumptions to provide a margin of security; reserve adjustments after rate increases for policies written at earlier and

less adequate rates; contingency or catastrophe reserves, and diversification of assets and underwriting risks; and

f. Any other relevant factors, including National Association of Insurance Commissioners' reports and independent judgments of the soundness of the insurer's financial condition as evidenced by ratings and reports of reliable professional financial services.

C.17:17-18 Maintenance of reserves.

8. Every insurance company transacting the business of insurance in this State shall, at all times, maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which such company may be liable, and to provide for the expenses of adjustments or settlement of such losses or claims.

C.17:17-19 Suspension, revocation of authority to do business.

9. The commissioner may suspend or revoke the authority to do business in this State of any insurer that does not comply with the provisions of R.S.17:17-1, R.S.17:17-6, R.S.17:17-7, R.S.17:17-9 and sections 5 through 8 of P.L.1993, c.234 (C.17:17-15 through C.17:17-18).

10. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 235

AN ACT concerning the capital and surplus requirements of certain insurers and revising parts of the statutory law.

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

C.17B:18-67 Short title.

1. Sections 2 through 6 of this act shall be known and may be cited as the "Dynamic Capital and Surplus Act of 1993."

C.17B:18-68 Surplus, capital required.

2. Except as provided by section 3 of this act, no domestic insurer shall commence business or continue to transact business

in this State unless the insurer has surplus and capital in cash and short term assets of at least the following amounts:

a. For either kind or both kinds of business specified in N.J.S.17B:17-3 and N.J.S.17B:17-5, \$1,000,000 in capital and \$4,000,000 in surplus for a stock insurer, and \$4,000,000 in surplus for a mutual insurer;

b. For the kind of business specified in N.J.S.17B:17-4, \$700,000 in capital and \$2,800,000 in surplus for a stock insurer, and \$3,000,000 in surplus for a mutual insurer; and

c. For all three kinds of business specified in N.J.S.17B:17-3, N.J.S.17B:17-4 and N.J.S.17B:17-5, \$1,530,000 in capital and \$6,120,000 in surplus for a stock insurer, and \$6,300,000 in surplus for a mutual insurer.

For purposes of this section, "surplus" means unencumbered assets in excess of all required reserves and other liabilities; and "short term assets" means notes, bonds, certificates of deposit, Treasury bills, commercial paper, money market instruments, repurchase agreements, collateral and mortgage loans and other obligations whose maturities, or repurchase dates on repurchase agreements, at the time of acquisition, were one year or less.

C.17B:18-69 Temporary waiver of capital, surplus requirements.

3. An insurer authorized to transact the kind of business specified in N.J.S.17B:17-3, N.J.S.17B:17-4 or N.J.S.17B:17-5 prior to and on the effective date of this act may apply to the commissioner for a temporary waiver of the applicable capital and surplus requirements set forth in section 2 of this act. The commissioner may, in his discretion, temporarily waive the applicable capital and surplus requirements for that insurer for a period of no more than five years, except that the insurer shall remain subject to capital and surplus requirements of no less amounts than those in effect immediately prior to the effective date of this act. In considering such a temporary waiver, the commissioner shall consider: the size of the insurer's deficiency in meeting the applicable capital and surplus requirements; the adequacy of the insurer's financial plan to meet the applicable capital and surplus requirements; and any other factors deemed appropriate by the commissioner.

C.17B:18-70 Increase in amount of required capital, surplus.

4. The commissioner may increase the amount of capital or surplus required of any insurer pursuant to section 2 of this act, or subsequently revise or redetermine that increase, using appropriate methods and procedures established by rules and regulations

adopted by him in order to provide adequate protection against risks affecting the insurer's financial condition that are not adequately or fully covered by its reserves or other assets, but under no circumstance shall an insurer's capital or surplus be less than the capital or surplus required pursuant to section 2 or, where applicable, section 3 of this act; provided, however, that any increase of capital or surplus pursuant to this section, including any increase required by a subsequent revision or redetermination, shall be made only after a formal departmental hearing, on a record, unless that hearing is waived by the affected insurer. All matters pertaining to a hearing or to an increase of capital or surplus pursuant to this section shall be confidential and not subject to subpoena or public inspection, except to the extent that the commissioner finds release of information necessary to protect the public. The hearing shall be initiated within 20 days after written notice to the insurer. Any decision regarding an increase of capital or surplus pursuant to this section, including an increase required by a subsequent revision or redetermination, shall contain findings specifying the factors deemed significant in regard to the particular insurer, and shall set forth the reasons supporting the increase of capital or surplus ordered by the commissioner. In determining any increase, revision or redetermination in the amount of capital or surplus, the commissioner shall consider the risks of:

a. Increases or decreases in the frequency and severity of losses under normal operating conditions, as well as increases or decreases in those values, beyond or below the levels contemplated by the rates that it charged for insurance and beyond or below those reasonably expected under normal conditions;

b. Increases or decreases in expenses under normal operating conditions, as well as increases or decreases in those values, beyond or below the levels contemplated by the rates that it charged for insurance and beyond or below those reasonably expected under normal conditions;

c. Increases or decreases in the value of, or return on, invested assets under normal operating conditions, as well as increases or decreases in those values, beyond or below those levels anticipated under normal conditions;

d. Changes in economic, social and market conditions that could adversely or favorably affect the financial condition of the insurer, including conditions that would make liquidity more or less impor-

tant than contemplated and would prevent or facilitate timely investments or force or prohibit untimely sales of assets; and

e. Any other contingencies, including reinsurance and unfunded or extracontractual obligations, which may affect the insurer's financial condition.

C.17B:18-71 Factors for determination of increase, revision, redetermination.

5. In determining any increase, revision or redetermination in the capital or surplus of an insurer pursuant to the provisions of section 4 of this act, the commissioner shall take into account the following factors:

a. Methods and techniques used to measure risk exposure and variability;

b. The information available relating to the magnitude of the various risks described in section 4 of this act;

c. The extent to which the risks described in section 4 of this act are independent or interrelated, and whether any dependency is direct or inverse;

d. The insurer's financial history, projections of profits or losses and other operational characteristics;

e. The extent to which the insurer has provided protection against contingencies in ways other than the establishment of surplus, including, but not limited to: redundancy of premiums; margin in reserves and liabilities; adjustability of contracts pursuant to the terms of the contracts; voluntary or mandatory investment valuation reserves; reinsurance; the use of conservative actuarial assumptions to provide a margin of security; reserve adjustments after rate increases for policies written at earlier and less adequate rates; contingency or catastrophe reserves, and diversification of assets and underwriting risks; and

f. Any other relevant factors, including National Association of Insurance Commissioners' reports and independent judgments of the soundness of the insurer's financial condition, as evidenced by ratings and reports of reliable professional financial services.

C.17B:18-72 Suspension, revocation of authority to do business.

6. The commissioner may suspend or revoke the authority to do business in this State of any insurer that does not comply with the provisions of this act.

7. N.J.S.17B:23-1 is amended to read as follows:

Transaction of business by foreign and alien insurers.

17B:23-1. Any foreign insurer which by its charter or by the laws of the state in which it was incorporated, or any alien insurer which

under the laws of the country or other jurisdiction in which it is organized, is authorized to write life insurance, annuities or health insurance or a combination thereof, may, if it meets the financial requirements of a similar domestic insurer set forth in sections 2 through 4 of P.L.1993, c.235 (C.17B:18-68 through C.17B:18-70), be admitted or continue to transact such authorized business in this State; provided that if an insurer is otherwise qualified therefor, the commissioner shall continue to so authorize any insurer which immediately prior to the effective date of this Code was lawfully authorized to write in this State a kind or kinds of insurance in addition to life insurance, annuities and health insurance.

C.17:48E-17.2 Special contingent surplus required for health service corporation.

8. Notwithstanding the provisions of section 5 of P.L.1988, c.71 (C.17:48E-17.1) or any other provision of law to the contrary, on or after December 31, 1996 or the date on which the commissioner deems that health service corporations have met the purpose of section 5 of P.L.1988, c.71 (C.17:48E-17.1) on its group and other activities, excluding individual business, whichever date is earlier, no health service corporation shall commence or continue to transact group business or other activities, excluding individual business, in this State unless its special contingent surplus for its group and other activities, excluding contingent surplus for individual contracts, meets the financial requirements set forth in sections 2 through 4 of P.L.1993, c.235 (C.17B:18-68 through C.17B:18-70). For purposes of this section, "special contingent surplus" shall have the same meaning as surplus in applying the requirements set forth in sections 2 through 4 of P.L.1993, c.235 (C.17B:18-68 through C.17B:18-70).

Repealer.

9. N.J.S.17B:18-9, N.J.S.17B:18-35 and N.J.S.17B:18-36 are repealed.

10. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 236

AN ACT concerning the examination of insurers.

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

C.17:23-20 Purpose of act.

1. The purpose of this act is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this act are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this State.

C.17:23-21 Definitions.

2. As used in this act:

“Commissioner” means the Commissioner of Insurance.

“Company” means any insurer or other person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner.

“Department” means the Department of Insurance.

“Examiner” means any individual or firm authorized by the commissioner to conduct an examination under this act.

“Insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.).

“Person” means any individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

C.17:23-22 Examination by commissioner.

3. a. The commissioner or any of his examiners may conduct an examination of the assets and liabilities, method of conducting business and all other affairs of any company as often as the commissioner in his sole discretion deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this State not less frequently than once every five years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the Examiners’ Handbook adopted by the National Association of

Insurance Commissioners and in effect when the commissioner exercises discretion under this section.

b. For purposes of completing an examination of any company under this act, the commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

c. In lieu of an examination under this act of any foreign or alien insurer licensed in this State, the commissioner may accept an examination report on the company as prepared by the insurance department or other regulatory agency for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if:

(1) the insurance department or other regulatory agency was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

(2) the examination is performed under the supervision of an accredited insurance department or other regulatory agency or with the participation of one or more examiners who are employed by such an accredited state insurance department or other regulatory agency and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department or other regulatory agency.

d. The reasonable expenses of any examination and any proceedings conducted under this act shall be fixed and determined by the commissioner, and he shall collect them from the company examined, which shall pay them on a presentation of an account of the expenses on such form as determined by the commissioner. If any company, after the examination, is adjudged insolvent by a court of competent jurisdiction, the expense of the examination, if unpaid, shall be ordered out of the assets of the company.

C.17:23-23 Examination procedures, regulations.

4. a. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance

Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

b. Every company or person from whom information is sought, including its officers, directors and agents, shall provide, to the examiners appointed under subsection a. of this section, timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The commissioner may, after notice and opportunity for a hearing, suspend, revoke or refuse to renew any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction, if the company, by its officers, directors, employees or agents, refuses to submit to examination or to comply with any reasonable request of the examiners.

c. The commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

d. When making an examination under this act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

e. Nothing contained in this act shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

f. Nothing contained in this act shall be construed to limit the commissioner's authority to use any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any

legal or regulatory action which the commissioner may, in his sole discretion, deem appropriate.

C.17:23-24 Examination reports.

5. a. All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company, its officers, directors, employees or agents or other persons examined, or as ascertained from the testimony of its officers, directors, employees, agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonable warranted from the facts.

b. No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit a copy of the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report.

c. Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals, and any relevant portions of the examiner's workpapers and either:

(1) Adopt the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure such violation; or

(2) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refiling pursuant to subsection a. of this section; or

(3) Call for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional documentation, data, information and testimony.

d. (1) All determinations made pursuant to paragraph (1) of subsection c. of this section shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such determination

shall be served upon the company, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(2) Any hearing conducted under paragraph (3) of subsection c. of this section by the commissioner or an authorized representative of the commissioner, shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of any such hearing, the commissioner shall make a determination pursuant to paragraph (1) of subsection c. of this section.

(a) The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. Nothing contained in this section shall require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(b) The hearing shall proceed with the commissioner or his representative posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the commissioner or his representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

e. (1) Upon the adoption of the examination report under paragraph (1) of subsection c. of this section, the commissioner may continue to hold the content of the examination report as private and confidential information for a period of 90 days except to the extent provided in subsection b. of this section

(2) Nothing contained in this act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department or other regulatory authority of this or any other state or country, or to law

enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this act.

(3) In the event the commissioner determines that regulatory action is appropriate as a result of any examination, he may initiate any proceedings or actions as provided by law.

f. All working papers, recorded information, documents and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this act shall be given confidential treatment and are not subject to subpoena and may not be made public by the commissioner or any other person, except to the extent provided in subsection e. of this section. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

C.17:23-25 Conflicts of interest for examiner.

6. No examiner shall be appointed by the commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this act. This section shall not be construed to automatically preclude an examiner from being:

- a. A policyholder or claimant under an insurance policy;
- b. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- c. An investment owner in shares of regulated diversified investment companies; or
- d. A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed. Notwithstanding the requirements of this section to the contrary, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though said persons may from time to time be similarly employed or retained by persons subject to examination under this act.

C.17:23-26 Immunity from liability; awards.

7. a. No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this act.

b. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this act, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

c. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection a. of this section.

d. A person identified in subsection a. of this section shall be entitled to an award of attorney's fees and costs if he is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

Repealer.

8. R.S.17:23-4, R.S.17:23-5; sections 1 and 2 of P.L.1958, c.15 (C.17:23-6 and 17:23-7); section 57 of P.L.1975, c.106 (C.17:46B-58); and N.J.S.17B:21-3 through N.J.S.17B:21-6, inclusive, are repealed.

9. Any administrative rules promulgated pursuant to the provisions of law which are repealed pursuant to section 8 of this act shall remain in full force and effect as if promulgated under this act in the first instance.

10. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 237

AN ACT concerning managing general agents.

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

C.17:22C-1 Definitions.

1. For the purposes of this act:

“Commissioner” means the Commissioner of Insurance.

“Insurer” means:

a. Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.);

b. Any medical service corporation operating pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.);

c. Any hospital service corporation operating pursuant to P.L.1938, c.366 (C.17:48-1 et seq.);

d. Any health service corporation operating pursuant to P.L.1985, c.236 (C.17:48E-1 et al.); and

e. Any dental service corporation operating pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.).

“Managing general agent” means any person, firm, association or corporation who binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for that insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premium equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following: (1) adjusts or pays claims in excess of an amount determined by the commissioner; or (2) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as managing general agents for the purposes of this act:

(1) An employee of the insurer;

(2) A United States manager of the United States branch of an alien insurer;

(3) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to P.L.1970, c.22 (C.17:27A-1 et seq.), and whose compensation is not solely based on the volume of premiums written;

(4) An attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

“Sub-managing general agent” means any person, firm, association or corporation with which a managing general agent contracts or which a managing general agent appoints to perform all or substantially all of the duties and responsibilities of the managing general agent.

“Underwrite” means the authority to accept or reject risk on behalf of the insurer.

C.17:22C-2 Licensing for domestic risks as insurance producer required.

2. No person, firm, association or corporation shall act in the capacity of a managing general agent with respect to risks located in this State for an insurer licensed in this State unless such person is licensed as an insurance producer in this State.

C.17:22C-3 Licensing for foreign risks.

3. No person, firm, association or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this State with respect to risks located outside of this State unless such person is licensed as a producer in this State.

C.17:22C-4 Bond required.

4. The commissioner may require a bond in an amount acceptable to him for the protection of the insurer.

C.17:22C-5 Errors, omissions policy.

5. The commissioner may require the managing general agent to maintain an errors and omissions policy in a form and amount acceptable to the commissioner.

C.17:22C-6 Contract requirements for managing general agents.

6. No person, firm, association, or corporation acting in the capacity of a managing general agent shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, if both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

a. The insurer may terminate the contract upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination. The insurer shall, within 15 days of any termination of the contract, file written notice of the termination with the commissioner. Notice of termination shall be on a form established by the commissioner and shall indicate the date of termination and the reason therefor. Agency appointment shall not terminate until notice of termination has been received by the commissioner.

b. The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

c. All funds collected for the account of an insurer shall be held by the managing general agent in a trust account which shall conform with the requirements established by the commissioner for the management of funds by insurance producers licensed in this State. The account shall be used for all payments on behalf of the insurer. The managing general agent shall retain no more than three months' estimated claims payments and allocated loss adjustment expenses.

d. Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and the right to copy all accounts and records related to this business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable to the commissioner.

e. The contract shall not be assigned in whole or part by the managing general agent.

f. Appropriate underwriting guidelines including:

- (1) The maximum annual premium volume;
- (2) The basis of the rates to be charged;
- (3) The types of risks which may be written;
- (4) Maximum limits of liability;
- (5) Applicable exclusions;
- (6) Territorial limitations;
- (7) Policy cancellation provisions; and
- (8) The maximum policy period.

The insurer shall have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations of this State governing the cancellation and nonrenewal of insurance policies.

g. If the contract permits the managing general agent to settle claims on behalf of the insurer the managing general agent shall

comply with the requirements governing the settlement of claims set forth in subsections (9) and (10) of section 4 of P.L.1947, c.379 (C.17:29B-4), or sections 1 and 2 of P.L.1975, c.101 (C.17B:30-13.1 and 17B:30-13.2), as applicable, and any regulations promulgated by the commissioner thereunder. In addition:

- (1) All claims shall be reported to the company in a timely manner.
- (2) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
 - (a) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;
 - (b) Involves a coverage dispute;
 - (c) May exceed the managing general agent's claims settlement authority;
 - (d) Is open for more than six months; or
 - (e) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less.
- (3) All claim files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estate, and the managing general agent shall have reasonable access to and the right to copy the files on a timely basis.
- (4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.
 - h. If electronic claims files are in existence, the contract shall address the timely transmission of the data.
 - i. If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business, or such other periods of time as determined by the commissioner, and not until the profits have been certified pursuant to section 7 of this act.
 - j. The managing general agent shall not:
 - (1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if

the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(2) Commit the insurer to participate in insurance or reinsurance syndicates;

(3) Appoint any insurance producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;

(4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer's policyholders' surplus as of December 31 of the last completed calendar year;

(5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer, without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;

(6) Permit its subproducer to serve on its board of directors;

(7) Jointly employ an individual, who is employed with the insurer; or

(8) Appoint a sub-managing general agent.

C.17:22C-7 Audit; loss reserve opinion, on-site procedural audit.

7. a. The insurer shall conduct and have on file an independent audit in a form acceptable to the commissioner of each managing general agent with which it has done business.

b. If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. Such loss reserve opinion shall be in the format of and otherwise satisfy all requirements established by the commissioner for loss reserve opinions required to be submitted by licensed insurers in this State.

c. The insurer shall at least biannually conduct an on-site procedural audit of the underwriting and claims processing operations of the managing general agent.

d. The managing general agent may negotiate reinsurance contracts or participation in insurance or reinsurance syndicates on behalf of the insurer. However, binding authority for all reinsurance contracts or participation in insurance or reinsurance

syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

e. Within 30 days of entering into, or within 15 days of termination of, a contract with a managing general agent, the insurer shall provide written notification of that appointment or termination to the commissioner. Notices of appointment of a managing general agent shall include a statement of duties which the managing general agent is expected to perform on behalf of the insurer, the lines of insurance for which the managing general agent is to be authorized to act, and any other information the commissioner may request.

f. An insurer shall review each quarter its books and records to determine if any insurance producer has become a managing general agent as defined in section 1 of this act. If the insurer determines that an insurance producer has become a managing general agent, the insurer shall promptly notify the insurance producer and the commissioner of such determination and the insurer and insurance producer shall fully comply with the provisions of this act within 30 days.

g. An insurer shall not appoint to its board of directors an officer, director, employee or controlling shareholder of its managing general agents. This subsection shall not apply to relationships governed by P.L.1970, c.22 (C.17:27A-1 et seq.) or, if applicable, any laws governing business transacted by producer-controlled property and casualty insurers in this State.

C.17:22C-8 Acts of managing general agent considered acts of insurer.

8. The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

C.17:22C-9 Violations; penalties; summary proceedings.

9. a. If the commissioner finds after notice and opportunity for a hearing that any person has violated any provision of this act, the commissioner may refuse to issue or renew the insurance producer's license, or may revoke or suspend the insurance producer's license.

b. In addition, or as an alternative to any other penalty, the commissioner may:

(1) Impose a fine of up to \$5,000 for the first violation, and not exceeding \$10,000 for each subsequent violation, and in appropriate circumstances order restitution of moneys owed to any person and reimbursement of the costs of investigation and prosecution;

(2) Order the managing general agent to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this act committed by the managing general agent.

c. If the commissioner finds that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order, he may enter an appropriate order to be effective pending completion of the hearing and entry of a final order. These orders may be entered on ex parte proofs if the proofs indicate that the commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest. Orders issued pursuant to this subsection shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered. In the alternative, or in addition, the commissioner is authorized to institute a proceeding in the Superior Court, to be conducted in a summary manner, for an injunction against specified acts or conduct in aid of the proceedings pending before him, including temporary injunctions and interim restraints.

d. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for by the laws of this State.

e. Nothing contained in this act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and auditors.

C.17:22C-10 Rules, regulations.

10. The commissioner may promulgate rules and regulations as are necessary to effectuate the purposes of this act.

11. This act shall take effect on the 180th day following enactment. No insurer shall continue to utilize the services of a managing general agent on and after the effective date of this act unless such utilization is in compliance with this act.

Approved August 9, 1993.

CHAPTER 238

AN ACT concerning the Insurance Regulatory Information System.

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

C.17:23B-1 Definitions.

1. For purposes of this act:

“Commissioner” means the Commissioner of Insurance.

“Department” means the Department of Insurance.

“Insurer” means:

a. A corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes (R.S.17:17-1 et seq.), or Subtitle 3 of Title 17B of the New Jersey Statutes (N.J.S.17B:17-1 et seq.);

b. Any medical service corporation operating pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.);

c. Any hospital service corporation operating pursuant to P.L.1938, c.366 (C.17:48-1 et seq.);

d. Any health service corporation operating pursuant to P.L.1985, c.236 (C.17:48E-1 et al.); and

e. Any dental service corporation operating pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.).

“NAIC” means the National Association of Insurance Commissioners.

C.17:23B-2 Filing of information with NAIC.

2. a. Every insurer authorized to do business in this State shall annually, on or before March 1 of each year, file with the NAIC a copy of its annual statement of financial condition, along with such additional filings, as prescribed by the commissioner pursuant to law for the preceding year. The information filed with the NAIC shall be in the same form and detail as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement of financial condition and any other financial information subsequently filed with the commissioner, including, but not limited to, quarterly financial statements, shall also be filed with the NAIC at the time this information is filed with the commissioner.

b. Foreign insurers that are domiciled in a state which has a law substantially similar to subsection a. of this section shall be deemed in compliance with this section.

c. The commissioner may require other entities which are required to file financial information with the commissioner to file such information with the NAIC.

C.17:23B-3 Immunity from civil liability.

3. Members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement of financial condition shall be acting as agents of the commissioner under the authority of this act, and in the absence of actual malice, shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder. Nothing herein shall abrogate or lessen the common and statutory law privileges and immunities of an authorized governmental agency or any of its respective employees.

C.17:23B-4 Confidentiality.

4. All financial analysis ratios and examination synopses concerning insurers that are submitted to the department by the NAIC Insurance Regulatory Information System are confidential and may not be disclosed by the department.

C.17:23B-5 Violations; penalties.

5. a. The commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer or other entity that fails to file information with the NAIC as required by this act when due or within any extension of time which the commissioner, for good cause, may have granted.

b. In addition, or as an alternative to any other penalty, the commissioner may impose a fine of up to \$5,000 for the first violation of any provision of this act, and up to \$10,000 for each subsequent violation. Each day of delay in filing information as required by this act shall constitute a separate violation.

6. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 239

AN ACT concerning business transacted with certain producer-controlled insurers.

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

C.17:22D-1 Definitions.

1. For purposes of this act:

“Accredited state” means a state in which the insurance department or other regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.

“Captive insurer” means an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

“Commissioner” means the Commissioner of Insurance.

“Control” or “controlled” has the same meaning as defined in section 1 of P.L.1970, c.22 (C.17:27A-1).

“Controlled insurer” means a licensed insurer which is controlled, directly or indirectly, by a producer.

“Controlling producer” means a producer who, directly or indirectly, controls an insurer.

“Licensed insurer” or “insurer” means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

“Producer” means any person engaged in the business of an insurance agent, insurance broker or insurance consultant as defined in section 2 of P.L.1987, c.293 (C.17:22A-2).

C.17:22D-2 Application of act.

2. a. This act shall apply to licensed insurers which are domiciled in this State or domiciled in a state that is not an accredited state having in effect a substantially similar law.

b. The provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), to the extent they are not superseded by this act, shall continue to apply to all parties within holding company systems subject to this act. This act shall not apply to captive insurers.

C.17:22D-3 Application of provisions of section; controlled business, regulated.

3. a. The provisions of this section shall apply if, in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent of the admitted

assets of the controlled insurer's quarterly statement filed as of September 30 of the prior year.

b. Notwithstanding subsection a. of this section to the contrary, the provisions of this section shall not apply if the controlling producer:

(1) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance;

(2) Accepts insurance placements only from non-affiliated sub-producers, and not directly from insureds; and

(3) The controlled insurer, except for insurance business written through a residual market plan such as a plan established pursuant to P.L.1970, c.215 (C.17:29D-1) or a plan established pursuant to P.L.1968, c.129 (C.17:37A-1 et seq.), accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

c. A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and contains the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for termination;

(2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the controlling producer;

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer no less often than monthly. The due date shall be fixed so that premiums or installments thereof collected shall be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under this contract;

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the laws of this State governing the statutory deposits of insurers doing business in this State. Funds of a controlling producer not required to be licensed in this State shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(6) The contract shall not be assigned in whole or in part by the controlling producer;

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to these standards, rules, procedures, rates and conditions which shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(8) The rates and terms of the controlling producer's commissions, charges or other fees and the purposes for those charges or fees. The rates of commissions, charges and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this paragraph and paragraph (7) of this subsection, comparable business includes, but is not limited to: the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(9) If the contract provides that the controlling producer, on insurance business placed with the controlled insurer, is to be compensated contingent upon the controlled insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection d. of this section;

(10) There shall be a limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The controlled insurer may establish a different limit for each line or sub-line of business. The controlled insurer shall notify the controlling producer when the applicable limit is

approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it had been notified by the controlled insurer that the limit has been reached; and

(11) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules.

d. Every board of directors of a controlled insurer shall establish an audit committee composed of independent directors. The audit committee shall meet annually with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary who shall be qualified, pursuant to the requirements established by the commissioner for loss reserve opinions required to be submitted by licensed property and casualty insurers in this State, to review the adequacy of the insurer's loss reserves.

e. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end, which shall include losses incurred but not yet reported, on business placed by the controlling producer. The loss reserve opinion shall satisfy all requirements established by the commissioner for loss reserve opinions required to be submitted by licensed property and casualty insurers in this State.

f. The controlled insurer shall annually report to the commissioner on April 1 of each year the amount of commissions paid to the controlling producer, the percentage this amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

C.17:22D-4 Written notice of relationship between controlling producer, controlled insurer; exception.

4. The controlling producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the controlling producer and the

controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the controlling producer and that the subproducer has or will notify the insured.

C.17:22D-5 Noncompliance; penalties.

5. a. (1) Upon a finding that the controlling producer or any other person has not complied with this act, or any regulation or order promulgated hereunder, the commissioner, after notice and opportunity to be heard, may order the controlling producer to cease placing business with the controlled insurer.

(2) Upon a finding that the controlled insurer or any policyholder thereof has suffered any loss or damage as the result of any noncompliance with the provisions of this act, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief.

b. If an order for rehabilitation or liquidation of the controlled insurer has been entered pursuant to the laws of this State governing the rehabilitation and liquidation of insurers, and the receiver appointed under that order believes that the controlling producer or any other person has not complied with this act, or any regulation or order promulgated hereunder, and the controlled insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the controlled insurer.

c. Upon a finding, after notice and opportunity for a hearing, that any person has violated any provision of this act, the commissioner may refuse to issue or renew the producer's license, or may revoke or suspend the producer's license.

d. In addition, or as an alternative to any other penalty, the commissioner may impose a fine of up to \$5,000.00 for the first violation, and not exceeding \$10,000.00 for each subsequent violation, and in appropriate circumstances order restitution of moneys owed to any person and reimbursement of the costs of investigation and prosecution.

e. Upon a finding that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order, the com-

missioner may enter an appropriate order to be effective pending completion of the hearing and entry of a final order. These orders may be entered on ex parte proofs if the proofs indicate that the commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest. Orders issued pursuant to this section shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered. In the alternative, or in addition, the commissioner may institute a proceeding in the Superior Court, to be conducted in a summary manner, for an injunction against specified acts or conduct in aid of the proceedings pending before him, including temporary injunctions and interim restraints.

f. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for by the laws of this State.

g. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

C.17:22D-6 Rules, regulations.

6. The commissioner may, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate rules and regulations as are necessary to effectuate the purposes of this act.

7. This act shall take effect on the first day of the month following the date of enactment. Controlled insurers and controlling producers who are not in compliance with section 3 of this act on its effective date shall have 60 days to come into compliance and shall comply with section 4 beginning with all policies written or renewed on or after 60 days after the effective date of this act.

Approved August 9, 1993.

CHAPTER 240

AN ACT concerning the formation and operation of risk retention groups and purchasing groups and supplementing Title 17 of the Revised Statutes.

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

C.17:47A-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Risk Retention Act."

C.17:47A-2 Definitions.

2. As used in this act:

"Commissioner" means the Commissioner of Insurance.

"Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site which is not owned or controlled by any person who performs that work or any person who hires an independent contractor to perform that work, and includes liability for activities which are completed or abandoned before the date of the occurrence which gives rise to the liability.

"Deductible" means any arrangement under which an insurer pays claims and then seeks reimbursement from the insured, except that the insurer's obligation to pay claims is not contingent upon reimbursement from the insured.

"Doing business in this State" means solicitation in this State, having group members in this State, or having an office in this State.

"Domicile" means, with respect to a purchasing group: for a corporation, the state in which the purchasing group is incorporated; for an unincorporated entity, the state of its principal place of business.

"Hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able to meet obligations to policyholders with respect to known claims and reasonably anticipated claims or to pay other obligations in the normal course of business.

"Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk which is determined to be insurance pursuant to the laws of this State.

"Liability" means legal liability for damages, including the cost of defense, legal costs and fees, and other claims expenses, because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of: any profit or non-profit business, trade, product, services, including professional services, premises, or operations; or any activity of any state or local government or any agency or political subdivision

thereof, but does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the federal "Employers' Liability Act," 45 U.S.C.51 et seq.

"Personal risk liability" means liability for damages because of injury to any person, damage to property or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from the responsibilities or activities referred to under the definition of "liability" in this section.

"Plan of operation" or a "feasibility study" means an analysis which presents the expected activities and results of the risk retention group, including: information sufficient to verify that its members are engaged in business or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available; pro forma financial statements and projections; appropriate opinions by a qualified actuary, including the determination of minimum premium or participation levels and capitalization required to commence operations and to prevent a hazardous financial condition, which shall be in the format and otherwise satisfy all requirements established by the commissioner for loss reserve actuarial opinions required to be submitted by licensed property and casualty insurers in this State; identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements; identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.

"Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product. "Product liability" does not include the liability of any person

for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

“Purchasing group” means any group which: has as one of its purposes the purchase of liability insurance on a group basis; purchases such insurance only for its group members and only to cover their similar or related liability exposure; is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and is domiciled in this or any other state.

“Retrospectively rated” means a rating plan or system, whereby the premium payable by an insured is subject to a contractual adjustment after the expiration of the policy based upon actual incurred experience.

“Risk retention group” means any corporation or other limited liability association: which is organized for the primary purpose of, and whose primary activity consists of, assuming and spreading all, or any portion, of the liability exposure of its group members; which is chartered and licensed as a liability insurance company and is authorized to engage in the business of insurance under the laws of any state, or prior to January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands, and before that date, certified to the commissioner of insurance, or other appropriate official, of at least one state that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as defined in the federal “Product Liability Risk Retention Act of 1981,” Pub.L.97-45 (15 U.S.C. §3901 et seq.), before October 27, 1986; which does not exclude any person from membership in the group solely to provide for members of that group a competitive advantage over such a person; which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group, or has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and its owners are the only persons who comprise the membership of the risk retention group and who are provided insurance by such group; whose members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services,

premises or operations; whose activities do not include the provision of insurance, other than liability insurance for assuming and spreading all or any portion of the liability of its group members, and reinsurance with respect to the similar or related liability exposure of any other risk retention group, or any member of any other group, which is engaged in businesses or activities so that this group or member meets the requirement that members are engaged in businesses or activities similar or related with respect to the liability to which those members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations for membership in the risk retention group which provides the reinsurance; and the name of which includes the phrase "risk retention group."

"Self-insured retention" means any fund or other arrangement to pay claims other than by an insurer, or any arrangement under which an insurer has no obligation to pay claims on behalf of an insured if it is not reimbursed by the insured.

"Similar insurance source" means an insurer authorized or admitted to do business in this State or a non-authorized surplus lines insurer eligible to do business in this State.

"Special risk" means a commercial lines insurance risk as specified on a list promulgated by the commissioner, which is of an unusual nature or high loss hazard or is difficult to place or rate, or which is excess or umbrella, or which is eligible for export; or a commercial lines insurance risk which produces a minimum annual premium in excess of \$10,000. Additions or deletions to the list promulgated may be made by the commissioner without a hearing upon notice to all licensed insurers.

"State" means this State, any other state of the United States or the District of Columbia.

C.17:47A-3 Requirements for establishment of risk retention group.

3. a. Any person wishing to establish a risk retention group chartered and licensed to write only liability insurance in this State shall, in addition to meeting the requirements pursuant to R.S.17:17-1 et seq., submit to the commissioner, on a form prescribed by the commissioner, a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within 10 days of any such change. The group shall not offer any additional kinds of liability insurance in this State, or in any other state, until a revision of such plan or study is approved by the commissioner.

b. At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information, upon receipt of which the commissioner shall forward this information to the National Association of Insurance Commissioners:

- (1) the identity of the initial members of the group;
- (2) the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group;
- (3) the amount and nature of initial capitalization;
- (4) the coverages to be afforded; and
- (5) the states in which the group intends to operate.

Providing this information to the National Association of Insurance Commissioners is in addition to, and shall not be deemed to satisfy, the requirements of this act.

c. Each risk retention group chartered in this State pursuant to this act shall be chartered and licensed to write only liability insurance in this State as provided in R.S.17:17-1 et seq., and is subject to the provisions of R.S.17:17-1 et seq. to the extent it is applied to insurers chartered and licensed in this State.

d. Notwithstanding any other provision of law to the contrary, all risk retention groups chartered in this State shall file an annual statement in the form adopted by the National Association of Insurance Commissioners and completed in accordance with its instructions and the National Association of Insurance Commissioners Accounting Practices and Procedures Manual and all applicable statutes and administrative rules. Additionally, all risk retention groups chartered in this State shall file quarterly statements covering the periods ending on March 31, June 30, and September 30, which statements shall be filed within 45 days after the end of each quarterly period. Quarterly statements shall be confidential and shall not be subject to public inspection or copying pursuant to the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.).

e. Every risk retention group chartered in this State shall provide the following notice in 10-point, boldface type, in every policy of insurance issued by the group:

“NOTICE

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE.

STATE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.”

C.17:47A-4 Required submissions by foreign risk retention group.

4. a. Each risk retention group which is licensed under the laws of any other state and which seeks to do business as a risk retention group in this State shall, before doing business in this State, submit to the commissioner:

(1) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of its charter and admission as a licensed insurer and its principal place of business;

(2) A copy of its plan of operation or feasibility study and revisions of such plan or study submitted to the state or states in which the risk retention group is chartered and licensed, except that the provision relating to a plan of operation or feasibility study shall not apply with respect to any line or classification of liability insurance which:

(a) was defined in the “Product Liability Risk Retention Act of 1981,” Pub.L.97-45 (15 U.S.C. §3901 et seq.), before October 27, 1986; and

(b) was offered before such date by any risk retention group which had been chartered and operating for not less than three years before such date.

The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by this subsection at the same time such revision is submitted to the commissioner of its chartering state;

(3) A statement of registration, for which a filing fee shall be established by the commissioner, which designates the commissioner as its agent for the purpose of receiving service of legal documents or process; and

(4) Any other information, including information regarding membership, which may be required by the commissioner to verify that the risk retention group is qualified under the definition of “risk retention group” pursuant to section 2 of this act.

b. No risk retention group may offer any kind of liability insurance in this State until it is notified by the commissioner that the risk retention group is qualified under the definition of “risk retention group” pursuant to section 2 of this act.

c. Each risk retention group which has received notice of qualification from the commissioner to do business in this State shall submit to the commissioner on a reasonable and timely basis:

(1) A copy of the group's annual financial statement submitted to the state in which the risk retention group is chartered and licensed as an insurance company, which shall be certified by an independent certified public accountant, and contain an opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist acceptable to the commissioner;

(2) A copy of each examination of the risk retention group as certified by the chartering state's commissioner or public official conducting the examination;

(3) Upon request of the commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the risk retention group;

(4) An annual financial statement filing fee in an amount established by the commissioner; and

(5) Such additional information as may be required to verify its continuing qualification as a risk retention group pursuant to the definition of "risk retention group" in section 2 of this act.

d. To the extent that licensed insurance producers are utilized by a risk retention group pursuant to this act, those producers shall keep a complete and separate record of all policies procured from each such risk retention group, which records shall be open to examination by the commissioner, as provided in Title 17 of the Revised Statutes. These records shall, for each policy and for each kind of insurance provided thereunder, include the following:

(1) the limit of liability;

(2) the time period covered;

(3) the effective date;

(4) the name of the risk retention group which issued the policy;

(5) the gross premium charged; and

(6) the amount of return premiums if any.

e. Each risk retention group, its agents and representatives shall comply with the requirements governing the settlement of claims set forth in section 4 of P.L.1947, c.379 (C.17:29B-4), and any other State law regarding deceptive, false or fraudulent acts or practices.

f. Each risk retention group shall submit to an examination by the commissioner to determine its financial condition, if the commissioner or other appropriate official of the jurisdiction in which the group is chartered and licensed has not initiated an examina-

tion or does not initiate an examination within 60 days after a request by the commissioner of this State. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' Examiner Handbook. The risk retention group shall pay the reasonable expenses of an examination upon presentation by the commissioner of a detailed account of the expenses.

g. Every application form for insurance from a risk retention group, and every policy issued by a risk retention group, on its front and declaration pages, shall contain in 10-point, boldface type the following notice:

"NOTICE

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE.

STATE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP."

h. Each risk retention group shall comply with any lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the commissioner pursuant to the laws governing the rehabilitation, liquidation, or conservation of assets of insurers, if there has been a finding of financial impairment after an examination pursuant to this section.

i. Each risk retention group shall comply with an injunction issued by a court of competent jurisdiction upon a petition by the commissioner alleging that the group is in a hazardous financial condition or is financially impaired.

C.17:47A-5 Prohibitions for risk retention groups; taxation of premiums.

5. a. No risk retention group, whether chartered in this State or another state, shall:

(1) Solicit the sale of or sell insurance to any person who is not eligible for membership in the group;

(2) Solicit the sale of or sell insurance if it is deemed to be in a hazardous condition or financially impaired;

(3) Sell or offer for sale any insurance coverage which is not permitted by the provisions of Title 17 of the Revised Statutes or which is declared unlawful by the highest court of this State; or

(4) Be owned by or controlled directly or indirectly by an insurer, or have an insurer as a member, except that this shall not apply in the case of a risk retention group in which all the members are insurers.

b. Notwithstanding the provisions of any other law to the contrary, no policy of insurance issued by a risk retention group, whether chartered in this State or otherwise, shall be required to be countersigned by an insurance producer residing in this State.

c. All premiums paid to risk retention groups not chartered in this State for coverage on risks within this State are subject to taxation at the same rate and are subject to the same interest, fines and penalties for nonpayment as that taxation which is applicable to surplus lines insurers. All premiums paid to risk retention groups chartered in this State for coverage on risks within this State are subject to taxation at the same rate and shall be subject to the same interest, fines, and penalties for nonpayment as that taxation which is applicable to foreign admitted insurers.

d. Each risk retention group, whether chartered in this State or otherwise, shall report all premiums paid to it which are attributable to risks insured within this State and shall remit the taxes owed on such premiums to, and on a form and in a manner required by, the Director of the Division of Taxation, in consultation with the commissioner.

C.17:47A-6 Additional information required.

6. In addition to complying with the applicable provisions of this act, any risk retention group doing business in this State prior to the effective date of this act shall, within 90 days of that date, submit to the commissioner the information set forth in subsection a. of section 4 of this act.

C.17:47A-7 Formation of purchasing group.

7. a. Only a group of persons with similar exposure to risk may form a purchasing group for the purpose of purchasing liability insurance. A purchasing group and its insurer or insurers shall be subject to all applicable laws of this State, except that a purchasing group and its insurer or insurers shall be exempt, in regard to liability insurance for the purchasing group, from any law that would:

(1) Prohibit the establishment of a purchasing group;

(2) Make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters;

(3) Prohibit a purchasing group or its members from purchasing insurance on a group basis described in paragraph (2) of this subsection;

(4) Prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) Require that a purchasing group have a minimum number of members, common ownership or affiliation, or certain legal forms;

(6) Require that a certain percentage of a purchasing group obtain insurance on a group basis;

(7) Otherwise discriminate against a purchasing group or any of its members; or

(8) Require that any insurance policy issued to a purchasing group or to any of its members be countersigned by an insurance producer residing in this State.

b. Each purchasing group with members located in this State shall, before doing business in this State, register with the commissioner, on a form prescribed by the commissioner, which form shall:

(1) Identify the state in which the group is domiciled;

(2) Identify all other states in which the group intends to do business;

(3) Specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(4) Identify the insurer or insurers from which the group intends to purchase its insurance and the domicile of that insurer;

(5) Specify the method by which, and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this State;

(6) Identify the principal place of business of the group; and

(7) Provide any other information as may be required by the commissioner to verify that the purchasing group is qualified according to the definition of "purchasing group" under section 2 of this act.

A purchasing group shall, within 10 days, notify the commissioner of any changes in any of the items set forth in this subsection.

c. The application for registration shall be accompanied by a registration fee in an amount established by the commissioner.

d. Each purchasing group registered pursuant to this section shall submit to the commissioner from time to time, as he may require, reports relative to the group's operations, including, but not limited to, information required by the commissioner to:

(1) verify that the entity qualifies as a purchasing group;

(2) determine where the purchasing group is located; and

(3) determine the appropriate tax treatment.

e. Each purchasing group registered pursuant to this section shall be subject to audits or examinations as the commissioner may deem necessary.

f. No purchasing group with members located in this State shall solicit business in this State, nor shall any person solicit, negotiate or effect a contract of insurance or accept any fee or commission on a risk located in this State which is to be effected through a purchasing group unless the purchasing group is notified by the commissioner that it is registered pursuant to the provisions of this section.

g. Each purchasing group with members located in this State shall file a statement with the commissioner which designates the commissioner as agent of the purchasing group for service of legal documents or service of process, except that this shall not apply in the case of any purchasing group which only purchases insurance that was authorized under the federal "Product Liability Risk Retention Act of 1981," Pub.L.97-45 (15 U.S.C. §3901 et seq.), which:

(1) Was domiciled prior to April 1, 1986 and is domiciled on or after October 27, 1986 in any state of the United States;

(2) Prior to October 27, 1986, purchased insurance from an insurance carrier licensed in any state and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state; or

(3) Was a purchasing group pursuant to the provisions of the "Product Liability Risk Retention Act of 1981," Pub.L.97-45 (15 U.S.C. §3901 et seq.), before October 27, 1986.

h. Any purchasing group which was doing business in this State prior to the enactment of this act shall, within 90 days after the effective date of this act, register with the commissioner pursuant to the provisions of subsection b. of this section and comply with the requirements of subsection g. of this section.

C.17:47A-8 Prohibitions for purchasing group; taxation of premiums.

8. a. No purchasing group doing business in this State shall purchase or maintain insurance covering its members located in this State from a risk retention group that is not chartered in this State, or from an insurer that is not authorized or admitted pursuant to Title 17 of the Revised Statutes to write insurance in this State, unless the purchase is from a risk retention group registered pursuant to section 4 of this act or a surplus lines insurer deemed eligible and placed pursuant to "the surplus lines law," P.L.1960, c.32 (C.17:22-6.40 et seq.).

b. No purchasing group doing business in this State shall purchase or maintain any insurance covering its members located in

this State which provides for a deductible or a self-insured retention applicable to the group as a whole, unless the deductible or self-insured retention is the sole responsibility of the individual members of the purchasing group.

c. No purchasing group doing business in this State shall purchase or maintain a policy of insurance covering its members located in this State which is retrospectively rated unless either:

(1) The retrospective premium is charged to each member based solely on that member's claims; or

(2) The retrospective premium payable by the group is subject to a provision which provides for a maximum premium payable by the group. The maximum premium shall be established so that there is at least a 10% actuarial probability that the premium otherwise payable will exceed the maximum premium.

d. No purchasing group doing business in this State may purchase or maintain a policy of insurance covering its members located in this State unless the policy form or contract complies with P.L.1982, c.114 (C.17:29AA-1 et al.) if the insurer is an authorized or admitted insurer, or section 9 of P.L.1960 c.32 (C.17:22-6.43) if the insurer is an eligible surplus lines insurer.

e. No purchasing group doing business in this State shall purchase insurance coverage with rates in this State which are less than the lowest rate approved by the commissioner for use by any authorized or admitted insurer for similar risks, except that this provision does not apply to special risks as defined in section 3 of P.L.1982, c.114 (C.17:29AA-3). The purchasing group may purchase insurance coverage with any premium modification plan on file and in actual use by an authorized or admitted insurer for similar risks. The commissioner may authorize the purchasing group to purchase insurance coverage with a lower rate or different premium modification plan if the group demonstrates to the commissioner's satisfaction that the exposure and experience of the group's members in this State justify a lower rate or different premium modification plan.

f. Each purchasing group doing business in this State shall report all premiums paid to it which are attributable to risks within the State, on a form and in a manner provided by the commissioner. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group are imposed upon the group's insurer at the same rate and subject to the same interest, fines and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insureds.

g. A purchasing group which obtains liability insurance from a risk retention group shall inform each of the members of the group which have a risk resident or located in this State that the risk is not protected by an insurance insolvency guaranty fund in this State, and that the risk retention group may not be subject to all insurance laws and regulations of this State.

C.17:47A-9 Noneligibility for membership.

9. No risk retention group, whether domiciled in this State or otherwise, shall be eligible to become a member of, contribute to, or derive any benefit from, the New Jersey Property-Liability Insurance Guaranty Association established pursuant to the provisions of P.L.1974, c.17 (C.17:30A-1 et seq.) or the New Jersey Surplus Lines Insurance Guaranty Fund established pursuant to the provisions of P.L.1984, c.101 (C.17:22-6.70 et al.).

C.17:47A-10 License as insurance producer required.

10. a. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance in this State from a risk retention group unless that person, firm, association or corporation is licensed as an insurance producer in accordance with the provisions of P.L.1987, c.293 (C.17:22A-1 et seq.) and all rules and regulations promulgated thereunder.

b. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance in this State for a purchasing group from an authorized insurer or risk retention group chartered in a state unless that person, firm, association or corporation is licensed as an insurance producer in accordance with P.L.1987, c.293 (C.17:22A-1 et seq.) and all rules and regulations promulgated thereunder.

c. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance coverage in this State for any member of a purchasing group under a purchasing group's policy unless that person, firm, association or corporation is licensed as an insurance producer in accordance with P.L.1987, c.293 (C.17:22A-1 et seq.) and all rules and regulations promulgated thereunder.

d. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating, procuring or effecting liability insurance from an insurer not authorized to do business in this State on behalf of a purchasing group with members located in this State unless that person, firm, association or corporation is licensed as a surplus lines agent in accordance with

P.L.1987, c.293 (C.17:22A-1 et seq.) and “the surplus lines law,” P.L. 1960, c.32 (C.17:22-6.40 et seq.) and all rules and regulations promulgated thereunder.

e. For purposes of acting as an insurance producer for a risk retention group or purchasing group pursuant to this section, the requirement of residence or maintenance of an office in this State shall not apply, except in the case of a licensed surplus lines agent.

f. Every person, firm, association or corporation licensed pursuant to the provisions of P.L.1987, c.293 (C.17:22A-1 et seq.), on business placed with risk retention groups or written through a purchasing group, shall inform each prospective insured of the provisions of the notice required by subsection e. of section 3 and subsection g. of section 4 of this act.

C.17:47A-11 Fines, penalties.

11. a. Each risk retention group, whether chartered in this State or otherwise, is subject to the same fines and penalties to which insurers licensed in this State are subject for any violation of this act or any other applicable law.

b. Failure of a purchasing group doing business in this State to comply with the provisions of this act may, after notice and an opportunity for a hearing, result in the revocation or suspension of its registration in this State. As an alternative or in addition to any other penalty, the commissioner may impose a fine of up to \$5,000 for the first violation, and for each subsequent violation, a fine not to exceed \$10,000, and in appropriate circumstances may order the restitution of moneys owed to any person and reimbursement of the costs of investigation and prosecution.

C.17:47A-12 Rules, regulations.

12. The commissioner may, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate rules and regulations necessary to effectuate the purposes of this act.

13. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 241

AN ACT concerning insurance holding company systems, amending and supplementing P.L.1970, c.22, amending P.L.1975, c.160 and repealing parts of the statutory law.

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

1. Section 1 of P.L.1970, c.22 (C.17:27A-1) is amended to read as follows:

C.17:27A-1 Definitions.

1. Definitions.

As used in P.L.1970, c.22 (C.17:27A-1 et seq.), the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

a. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

b. The term "commissioner" shall mean the Commissioner of Insurance or his deputies.

c. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities of any other person, provided that no such presumption of control shall of itself relieve any person so presumed to have control from any requirement of P.L.1970, c.22 (C.17:27A-1 et seq.). This presumption may be rebutted by a showing made in the manner provided by subsection j. of section 3 that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and an opportunity to be heard, and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

d. An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer.

e. The term "insurer" means any person or persons, corporation, partnership or company authorized by the laws of this State to transact the business of insurance in this State, except that it

shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

f. A “person” is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert.

g. (Deleted by amendment, P.L.1993, c.241.)

h. A “subsidiary” of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

i. The term “voting security” shall include any security convertible into or evidencing a right to acquire a voting security.

j. “Acquisition” means any agreement, arrangement or activity, the consummation of which results in a person acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, and assets, and bulk reinsurance and mergers.

2. Section 2 of P.L.1970, c.22 (C.17:27A-2) is amended to read as follows:

C.17:27A-2 Acquisition of control of or merger with domestic insurer.

2. Acquisition of control of or merger with domestic insurer.

a. Filing requirements. No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, a statement containing the information required by this section and such offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

For purposes of this subsection a domestic insurer shall include any other person controlling a domestic insurer.

b. Content of statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection a. is to be effected (hereinafter called "acquiring party"), and

(i) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years;

(ii) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (i) of this paragraph.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates), and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection a. which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition

referred to in subsection a., and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection a. which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in subsection a. in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection a. during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of any recommendations to purchase any security referred to in subsection a. made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection a., and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract or understanding made or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection a. for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

If the person required to file the statement referred to in subsection a. is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by paragraphs (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls

such partner or member. If any such partner, member or person is a corporation or the person required to file the statement referred to in subsection a. is a corporation, the commissioner may require that the information called for by paragraphs (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change.

c. Alternative filing materials. If any offer, request, invitation, agreement or acquisition referred to in subsection a. is proposed to be made by means of a registration statement under the Securities Act of 1933, 48 Stat. 74 (15 U.S.C. § 77a et seq.), or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, 48 Stat. 881 (15 U.S.C. § 78a et seq.), or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection a. may utilize such documents in furnishing the information called for by that statement.

d. Approval by commissioner; hearings.

(1) The commissioner shall approve any merger or other acquisition of control referred to in subsection a. unless, after a public departmental hearing thereon, he finds that:

(i) After the change of control the domestic insurer referred to in subsection a. would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein. In applying the competitive standard of this subparagraph:

(a) The informational requirements of paragraph (1) of subsection c. and paragraph (2) of subsection d. of section 7 of P.L.1993, c.241 (C.17:27A-4.1) shall apply;

(b) The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the cri-

teria provided by paragraph (3) of subsection d. of section 7 of P.L.1993, c.241 (C.17:27A-4.1) exist; and

(c) The commissioner may condition approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(iii) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(iv) The financial condition of any acquiring party is such that (a) the acquiring party has not been financially solvent on a generally accepted accounting principles basis, or if an insurer, on a statutory accounting basis, for the most recent three fiscal years immediately prior to the date of the proposed acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); (b) the acquiring party has not generated net before-tax profits from its normal business operations for the latest two fiscal years immediately prior to the date of acquisition (or for the whole of such lesser period as such acquiring party and any predecessors thereof shall have been in existence); or (c) the acquisition debt of the acquiring party exceeds 50% of the purchase price of the insurer;

(v) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(vi) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

(2) The public hearing referred to in paragraph (1) shall be held within 60 days after the statement required by subsection a. is filed and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and the insurer. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to such other persons as may be designated by the commissioner. The hearing shall, at the commissioner's discretion, be conducted by the commissioner or his designee who shall report to the commissioner and advise him on the nature of the matter delegated. The commissioner shall

make a determination or issue an order, based upon that advice and report, as he shall, in his discretion, determine, and that determination or order shall have the same force and effect as if the commissioner had conducted that hearing personally. The commissioner shall make a determination within 45 business days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of this State. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearings.

(3) The commissioner may retain, at the acquiring person's expense, any attorneys, actuaries, accountants and other persons as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control.

e. (Deleted by amendment, P.L.1993, c.241.)

f. Exemptions. The provisions of this section shall not apply to:

(1) Any transaction which is subject to the provisions of R.S.17:27-1 et seq. or N.J.S.17B:18-60 et seq., concerning the merger or consolidation of two or more insurers; and

(2) Any offer, request, invitation, agreement or acquisition which the commissioner by order shall exempt therefrom as (a) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (b) as otherwise not comprehended within the purposes of this section.

g. Violations. The following shall be violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection a. or b.; or

(2) Subject to subsection f., the effectuation of, or any attempt to effectuate, an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

h. Jurisdiction; consent to service of process.

The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an

appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

3. Section 3 of P.L.1970, c.22 (C.17:27A-3) is amended to read as follows:

C.17:27A-3 Registration of insurers.

3. Registration of insurers.

a. Registration. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in: this section; paragraph (1) of subsection a. and subsections b. and c. of section 4 of P.L.1970, c.22 (C.17:27A-4); and either paragraph (2) of subsection a. of section 4 of P.L.1970, c.22 (C.17:27A-4) or a substantially similar provision which requires that each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions, including change of or additions to ownership, within 15 days after the end of each month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within 60 days after the effective date of this 1993 amendatory and supplementary act or 15 days after it becomes subject to registration, whichever is later, and annually thereafter by April 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

b. Information and form required. Every insurer subject to registration shall file a registration statement and a summary of the registration statement on a form provided by the commissioner, which shall contain current information about:

(1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) The identity and relationship of every member of the insurance holding company system;

(3) The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(b) Purchases, sales, or exchanges of assets;

(c) Transactions not in the ordinary course of business;

(d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(e) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(f) Reinsurance agreements;

(g) Dividends and other distributions to shareholders, including the declarations and authorizations thereof; and

(h) Consolidated tax allocation agreements;

(4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; or

(5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

c. **Materiality.** No information need be disclosed on the registration statement filed pursuant to subsection b. of this section if such information is not material for the purposes of this section. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments, guarantees or other contingent obligations involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section.

d. **Amendments to registration statements.** Each registered insurer shall keep current the information required to be disclosed

in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such change or addition.

e. Information of insurers. Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if that information is reasonably necessary to enable the insurer to comply with the provisions of P.L.1970, c.22 (C.17:27A-1 et seq.).

f. Termination of registration. The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

g. Consolidated filing. The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

h. Alternative registration. The commissioner may allow an insurer which is authorized to do business in this State and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection a. and to file all information and material required to be filed under this section.

i. Exemptions. The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

j. Disclaimer. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

k. Violations. The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section.

4. Section 4 of P.L.1970, c.22 (C.17:27A-4) is amended to read as follows:

C.17:27A-4 Standards.

4. Standards.

a. Transactions with affiliates.

(1) Transactions by registered insurers with their affiliates shall be subject to the following standards:

(a) The terms shall be fair and reasonable;

(b) Charges or fees for services performed shall be reasonable;

(c) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(d) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and

(e) The insurer's surplus as regards policyholders following any transaction with affiliates or dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into that transaction at least 30 days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that 30 day period:

(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees or other contingent obligations, investments, or loans collateralized by the stock of a subsidiary or affiliate, provided such transactions equal or exceed: (i) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, as of December 31 next preceding; (ii) with respect to life insurers, 3% of the insurer's admitted assets, as of December 31 next preceding;

(b) Loans or extensions of credit to any person who is not an affiliate, in which the insurer makes such loans or extensions of

credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making those loans or extensions of credit, provided those transactions are equal to or exceed: (i) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders, as of December 31 next preceding; (ii) with respect to life insurers, 3% of the insurer's admitted assets, as of December 31 next preceding;

(c) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate if an agreement or understanding exists between the insurer and non-affiliate that any portion of those assets will be transferred to one or more affiliates of the insurer;

(d) All management agreements, service contracts and all cost-sharing arrangements; and

(e) Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders. Nothing herein contained shall be deemed to authorize or permit any transactions which, in the case of an insurer which is not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that such separate transactions were entered into over any 12 month period for that purpose, he may exercise his authority under section 8 of P.L.1993, c.241 (C.17:27A-9.1).

(4) The commissioner, in reviewing transactions pursuant to paragraph (2) of this subsection, shall consider whether the transactions comply with the standards set forth in paragraph (1) of this subsection and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds 10% of that corporation's voting securities.

(6) The commissioner may by regulation specify certain types of transactions that need not be submitted for review under this subsection if he determines that those transactions would not have a significant impact on the financial condition or methods of operation of the insurer.

b. Adequacy of surplus. For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer's insured risks;

(5) The nature and extent of the insurer's reinsurance program;

(6) The quality, diversification, and liquidity of the insurer's investment portfolio;

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other comparable insurers in respect of the factors enumerated in this subsection;

(9) The adequacy of the insurer's reserves;

(10) The quality and liquidity of investments in affiliates. The commissioner may discount any such investments or treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants; and

(11) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items.

c. Dividends and other distributions.

(1) A domestic insurer subject to registration under section 3 of P.L.1970, c.22 (C.17:27A-3) shall report to the commissioner any dividend or distribution to its shareholders within five business days following declaration and at least 30 days, after receipt of that report by the commissioner, prior to payment. For good cause shown, the commissioner may reduce the notification period prior to payment to a period of not less than 10 days. The commissioner shall limit or disallow the payment of any dividend or

distribution if he determines that the insurer's surplus as regards policyholders is not reasonable in relation to its outstanding liabilities and adequate to its financial needs pursuant to subsection b. of this section or if the insurer is otherwise found to be in a hazardous financial condition.

(2) (a) No domestic insurer subject to registration under section 3 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (i) 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such 30-day period.

(b) For purposes of this paragraph, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of (i) 10% of such insurer's surplus as regards policyholders as of December 31 next preceding, or (ii) the net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, not including realized capital gains, for the 12 month period ending December 31 next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(c) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon policyholders until (i) 30 days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or (ii) the commissioner shall have approved such payment within such 30-day period.

(3) Except for extraordinary dividends or distributions paid pursuant to paragraph (2) of this subsection, all dividends or distributions to shareholders shall be declared or paid by insurers subject to registration under section 3 of P.L.1970, c.22 (C.17:27A-3) from only earned surplus. For purposes of this paragraph, "earned surplus" means unassigned funds (surplus), as reported on the insurer's annual statement as of December 31 next preceding, less unrealized capital gains and revaluation of assets.

d. Management of domestic insurers subject to registration.

(1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would oth-

erwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with P.L.1970, c.22 (C.17:27A-1 et seq.).

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of paragraph (1) of subsection a. of this section.

(3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of that insurer or of any entity controlling, controlled by, or under common control with, that insurer and who are not beneficial owners of a controlling interest in the voting securities of that insurer or any such entity. At least one such person shall be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with, the insurer and who are not beneficial owners of a controlling interest in the voting securities of the insurer or any such entity. The committee shall be responsible for recommending the selection of independent certified public accountants, reviewing the insurer's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation, including bonuses or other special payments, of the principal officers.

(5) The provisions of paragraphs (3) and (4) of this subsection d. shall not apply to a domestic insurer if the person controlling the insurer is an entity having a board of directors and committees thereof that meet the requirements of those paragraphs.

5. Section 5 of P.L.1970, c.22 (C.17:27A-5) is amended to read as follows:

C.17:27A-5 Examination.

5. Examination.

a. Power of commissioner. Subject to the limitation contained in this section and in addition to the powers which the commissioner has under other sections of Title 17 of the Revised Statutes and Title 17B of the New Jersey Statutes relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under section 3 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or to determine compliance with P.L.1970, c.22 (C.17:27A-1 et seq.). In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.

b. (Deleted by amendment, P.L.1993, c.241.)

c. Use of consultants. The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other persons as shall be necessary to assist in the conduct of the examination under subsection a. above. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

d. Expenses. The reasonable expenses of the examination pursuant to subsection a. above shall be fixed and determined by the commissioner, and he shall collect them from the insurer examined, which shall pay them on presentation of an accounting of the expenses.

6. Section 6 of P.L.1970, c.22 (C.17:27A-6) is amended to read as follows:

C.17:27A-6 Confidential treatment.

6. Confidential treatment. All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 5 of P.L.1970, c.22 (C.17:27A-5) and all information reported pursuant to section 3 and section 4 of P.L.1970, c.22 (C.17:27A-3 and 17:27A-4) shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer, and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the pub-

lication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate.

C.17:27A-4.1 Definitions, regulations concerning acquisitions.

7. a. As used in this section only:

“Acquisition” means any agreement, arrangement or activity, the consummation of which results in a person acquiring, directly or indirectly, the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

An “involved insurer” includes an insurer which either acquires or is acquired, is affiliated with an insurer which is an acquirer or is acquired, or is the result of a merger.

b. (1) Except as provided in paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this State.

(2) This section shall not apply to the following:

(a) An acquisition subject to approval or disapproval by the commissioner pursuant to section 2 of P.L.1970, c.22 (C.17:27A-2);

(b) A purchase of securities solely for investment purposes, so long as those securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this State. If a purchase of securities results in a presumption of control as defined in subsection c. of section 1 of P.L.1970, c.22 (C.17:27A-1), it is not solely for investment purposes unless the commissioner or other appropriate official of the insurer’s state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and such disclaimer action or affirmative finding is communicated by the domiciliary commissioner or official to the commissioner of this State;

(c) The acquisition of already affiliated persons;

(d) An acquisition if, as an immediate result of the acquisition, the combined market share of the involved insurers would not exceed five percent of the total market, there would be no increase in the market, or

(i) the combined market share of the involved affiliated insurers would not exceed twelve percent of the total market, and

(ii) the market share increases by no more than two percent of the total market.

For the purpose of this subparagraph (d), “market” means direct written insurance premium in this State for a line of business as

contained in the annual statement required to be filed by insurers licensed to do business in this State;

(e) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(f) An acquisition of an insurer whose domiciliary commissioner or other appropriate official affirmatively finds that: the insurer is in failing condition; there is a lack of feasible alternatives to improving that condition; the public benefits of improving that insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and such findings are communicated by the domiciliary commissioner or official to the commissioner of this State.

c. An acquisition covered by subsection b. of this section shall be subject to an order pursuant to subsection e. of this section unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section 6 of P.L.1970, c.22 (C.17:27A-6).

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the commissioner relating to those markets which, under subparagraph (2)(d) of subsection b. of this section, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as he deems necessary. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State, accompanied by a summary of the education and experience of that person indicating his ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt by the commissioner of pre-acquisition notification and shall end on the earlier of the 30th day after the date of that notification, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the 30th day after receipt of that additional information by the commissioner or termination of the waiting period by the commissioner.

d. (1) The commissioner may enter an order under paragraph (1) of subsection e. with respect to an acquisition if there is sub-

stantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance of this State or, to tend to create a monopoly therein or if the insurer fails to file adequate information in compliance with subsection c.

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (1) of this subsection, the commissioner shall consider the following:

(a) Any acquisition covered under subsection b. involving two or more insurers competing in the same market shall be prima facie evidence of violation of the competitive standard if the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more

or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more

Insurer A	Insurer B
15%	3% or more
19%	1% or more

For the purposes of this subparagraph (a), the insurer with the largest share of the market shall be deemed to be Insurer A. A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table shall be prima facie evidence of violation of the competitive standards in paragraph (1) of this subsection.

(b) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a

period of time, extending from any base year five to ten years prior to the acquisition, up to the time of the acquisition. Any acquisition or merger covered under subsection b. involving two or more insurers competing in the same market shall be prima facie evidence of a violation of the competitive standard in paragraph (1) of this subsection if:

(i) there is a significant trend toward increased concentration in the market;

(ii) one of the insurers involved is one of the insurers in a grouping of such large insurers showing the requisite increase in the market share; and

(iii) another involved insurer's market is two percent or more.

(c) Even though an acquisition is not prima facie violative of the competitive standard under subparagraphs (a) and (b) of this paragraph (2), the commissioner may establish the requisite anti-competitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under those subparagraphs, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subparagraph (c) include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(d) For the purposes of this paragraph (2):

The term "insurer" includes any company or group of companies under common management, ownership or control;

The term "market" means the relevant product and geographical markets as determined by the commissioner. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this State, and the relevant geographical market is assumed to be this State.

The burden of showing prima facie evidence of violation of the competitive standard rests upon the commissioner.

(3) An order may not be entered under paragraph (1) of subsection e. if:

(a) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from those economies exceed the public benefits which would arise from not lessening competition; or

(b) The acquisition will substantially increase the availability of insurance, and the public benefits of that increase exceed the public benefits which would arise from not lessening competition.

e. (1) (a) If an acquisition violates the standards of this section, the commissioner may enter an order:

(i) requiring an involved insurer to cease and desist from doing business in this State with respect to the line or lines of insurance involved in the violation; or

(ii) denying the application of an acquired or acquiring insurer for a license to do business in this State.

(b) Such an order shall not be entered unless:

(i) there is a hearing,

(ii) notice of that hearing is issued prior to the end of the waiting period and not less than 15 days prior to the hearing; and

(iii) the hearing is concluded and the order is issued no later than 60 days after the end of the waiting period. Every order shall be accompanied by a written decision of the commissioner setting forth his findings of fact and conclusions of law.

(c) An order entered under this subsection shall not become final earlier than 30 days after it is issued, during which time the involved insurer may submit a plan to remedy the anti-competitive impact of the acquisition within a reasonable time. Based upon such plan or other information, the commissioner shall specify the conditions, if any, under which, and the time period during which, the aspects of the acquisition causing a violation of the standards of this section may be remedied and the order vacated or modified.

(d) An order pursuant to this subsection shall not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the commissioner under paragraph (1) while such order is in effect, may after notice and hearing, be subject to a penalty of up to \$10,000 for each day of violation, or suspension or revocation of that person's license, or both.

(3) Any insurer or other person who fails to make any filing required by this section shall be required to pay a penalty of up to \$5,000 per violation.

f. Subsections b. and c. of section 8 of P.L.1970, c.22 (C.17:27A-8) and section 10 of P.L.1970, c.22 (C.17:27A-10) shall not apply to acquisitions covered under this section.

g. This section shall not limit the commissioner's authority to refuse to renew or revoke the certificate of authority of an insurer admitted to transact business in this State pursuant to R.S.17:32-1 et seq., or N.J.S.17B:23-1 et seq.

C.17:27A-9.1 Violations; penalties.

8. a. Any insurer failing to file any registration statement as required by P.L.1970, c.22 (C.17:27A-1 et seq.) shall be required to pay a penalty of up to \$5,000 for each day's delay.

b. Every director or officer of an insurance holding company system who violates, participates in, or assents to, or who shall permit any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to subsection a. of section 3 of P.L.1970, c.22 (C.17:27A-3) or paragraph (2) of subsection a., or subsection c. of section 4 of P.L.1970, c.22 (C.17:27A-4), or which otherwise violate P.L.1970, c.22 (C.17:27A-1 et seq.), shall pay, in their individual capacity, a penalty of up to \$5,000 per violation.

c. Whenever it appears to the commissioner that any insurer subject to P.L.1970, c.22 (C.17:27A-1 et seq.) or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to section 4 of P.L.1970, c.22 (C.17:27A-4) and which would not have been approved had such approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any such contracts and restore the status quo if such action is in the best interest of the policyholders, creditors or the public.

d. Whenever it appears to the commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of P.L.1970, c.22 (C.17:27A-1 et seq.), the commissioner may cause criminal proceedings to be instituted in the Superior Court against that insurer or the responsible director, officer, employee or agent thereof. An insurer which willfully violates that act may be fined up to \$10,000 per violation. Any

individual who willfully violates P.L.1970, c.22 (C.17:27A-1 et seq.) may be fined in his individual capacity up to \$10,000 per violation or, be imprisoned for not less than one year and not more than three years, or both.

e. Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his duties under P.L.1970, c.22 (C.17:27A-1 et seq.), upon conviction thereof, may be imprisoned for not less than one year and not more than three years or fined up to \$10,000 per violation, or both. Any fines imposed shall be paid by the officer, director, or employee in his individual capacity, if legally liable, or the insurer.

C.17:27A-10.1 Right to recovery for receiver.

9. a. If an order for rehabilitation or liquidation of a domestic insurer has been entered, the receiver appointed under that order shall have a right to recover on behalf of the insurer:

(1) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions (other than distributions of shares of the same class of stock) paid by the insurer on its capital stock; or

(2) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiaries to a director, officer or employee, if the distribution or payment pursuant to (1) or (2) is made at any time during the 12 months preceding the filing of the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections b., c. and d. of this section.

b. No such distribution shall be recoverable if the parent or affiliate shows that, when paid, the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

c. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time such distributions were paid shall be liable up to the amount of the distributions or payments defined under subsection a. which that person received. Any person who otherwise controlled the insurer at the time such distributions were declared shall be liable up to the amount of distributions he would have

received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

d. In the case of an insurer being liquidated, the maximum amount recoverable under this section shall be the amount, in excess of all other available assets of the insurer, necessary to pay its contractual obligations and to reimburse any guaranty funds. In the case of an insurer being rehabilitated, the maximum amount recoverable shall be the full amount of any distributions which a receiver has a right to recover under this section.

e. To the extent that any person liable under subsection c. of this section is insolvent or otherwise fails to pay claims due from it pursuant to that subsection, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from such parent corporation or holding company or person who otherwise controlled it.

C.17:27A-7.1 Filing fees.

10. The commissioner may by rule or regulation set reasonable, necessary and appropriate fees for any filing required pursuant to P.L.1970, c.22 (C.17:27A-1 et seq.). All fees payable to the commissioner pursuant to this section are nonrefundable.

11. Section 59 of P.L.1975, c.106 (C.17:46B-60) is amended to read as follows:

C.17:46B-60 Other sections applicable.

59. Other sections applicable. In addition to the provisions of this act, only the following provisions of the laws governing insurance companies and insurance agents as presently enacted and hereinafter amended, except as they are inconsistent with the provisions of this act, shall apply to the business of title insurance to title insurance companies, which shall be considered as within the class of insurance companies regulated by such provisions solely for the limited purpose of being subject to such provisions:

P.L.1970, c.12 (C.17:1C-1 to 17:1C-18)

P.L.1948, c.266 (C.17:3A-1 to 17:3A-7)

R.S.17:17-1, 17:17-4, 17:17-5, 17:17-8 and 17:17-10

P.L.1948, c.157 (C.17:17A-1 to 17:17A-4)

P.L.1965, c.57 (C.17:17B-1 to 17:17B-8)

R.S.17:18-1, 17:18-2, 17:18-4 and 17:18-10

R.S.17:19-1 to 17:19-7

R.S.17:20-4 and 17:20-5
 P.L.1966, c.85 (C.17:20-6)
 R.S.17:21-1 to 17:21-3
 P.L.1960, c.32, ss. 3, 4, and 5 (C.17:22-6.37 to 17:22-6.39)
 P.L.1993, c.237 (C.17:22C-1 et seq.)
 P.L.1993, c.239 (C.17:22D-1 et seq.)
 P.L.1993, c.244 (C.17:22E-1 et seq.)
 R.S.17:23-2, 17:23-4 and 17:23-5
 P.L.1958, c.15 (C.17:23-6, 17:23-7)
 P.L.1993, c.236 (C.17:23-20 et seq.)
 P.L.1993, c.238 (C.17:23B-1 et seq.)
 R.S.17:24-5, 17:24-12
 P.L.1949, c.248 (C.17:24-13 to 17:24-16)
 R.S.17:25-7
 R.S.17:26-1 to 17:26-3
 R.S.17:27-1 to 17:27-5
 P.L.1970, c.22 (C.17:27A-1 et seq.)
 P.L.1993, c.241, ss. 7, 8, 9 (C.17:27A-4.1 et al.)
 R.S.17:32-1, 17:32-2, 17:32-4, 17:32-8 to 17:32-10
 R.S.17:32-13 and 17:32-14
 P.L.1950, c.231 (C.17:32-15)
 P.L.1968, c.234, ss.1 to 5 (C.17:32-16 to 17:32-20).
 P.L.1993, c.245 (C.17:51A-1 et seq.)
 P.L.1993, c.243 (C.17:51B-1 et al.)

Repealer.

12. Section 9 of P.L.1970, c.22 (C.17:27A-9) and sections 28 and 29 of P.L.1975, c.106 (C.17:46B-28 and 17:46B-29) are repealed.

13. This act shall take effect immediately, provided that any sanctions imposed in accordance with section 8 shall apply only to violations occurring on or after the effective date of this act.

Approved August 9, 1993.

CHAPTER 242

AN ACT concerning the valuation of certain securities and the filing of certain reports by certain insurers and amending and supplementing parts of the statutory law.

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

1. N.J.S.17B:20-8 is amended to read as follows:

Valuation of securities; violations; penalties.

17B:20-8. Except as otherwise required by the commissioner, securities held by insurers authorized to do business in this State shall be valued in accordance with the published valuation standards of the Securities Valuation Office of the National Association of Insurance Commissioners. Every insurer licensed to transact business in this State shall comply with the filing and valuation requirements of the Securities Valuation Office of the National Association of Insurance Commissioners or requirements established by the commissioner, as applicable, with respect to the valuation of securities. Any insurer that fails to comply with the provisions of this section shall be subject to a penalty of not less than \$1,000 nor more than \$5,000 for a first violation, and not less than \$2,000 nor more than \$10,000 for each subsequent violation.

2. N.J.S.17B:21-1 is amended to read as follows:

Annual statement; forms.

17B:21-1. a. Every insurer transacting business in this State shall annually, on or before March 1, file with the commissioner a statement subscribed and sworn to by its president or the chairman of the board if he is the chief executive officer and secretary, or, in their absence, by two of its officers and by a qualified actuary, showing the financial condition at the close of business on December 31 of the year last preceding, and its business for that year in the format adopted by the National Association of Insurance Commissioners and in use at the time the statement is due. The annual statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners, and all applicable provisions of law. Additionally, every insurer shall file quarterly statements in the format adopted by the National Association of Insurance Commissioners covering the periods ending on March 31, June 30 and September 30, which shall be filed within 45 days after each such date. Quarterly statements shall be confidential and shall not be subject to public inspection or copying pursuant to P.L.1963, c.73

(C.47:1A-1 et seq.). All statements shall be submitted in the form and contain any additional matters the commissioner prescribes.

b. The commissioner may also address any inquiries to the insurer or its officers in relation to its condition or affairs, or any matter connected with its transactions, and the officers of the insurer shall promptly reply in writing to all such inquiries. The commissioner may, for good cause, extend the time within which the statement or any part thereof may be filed. The annual and quarterly statements of an alien insurer shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its United States business.

c. If an insurer domiciled in this State makes a request in writing no more than 60 days prior to December 1, the commissioner shall annually, in the month of December, furnish to such insurer one or more blanks in the form of the statement adopted by the National Association of Insurance Commissioners and in use at the time furnished.

d. Insurers issuing both participating and nonparticipating policies shall make such separate statement of profits and losses, margins and expenses, with reference to each of such kinds of business, and showing the manner in which any general outlays of the insurer have been apportioned to each of such kinds of business, as may be required by the commissioner.

e. The commissioner shall have power to make from time to time such modifications and additions in such form and the matters contained therein as he may deem desirable or necessary to ascertain the condition and affairs of the insurer.

3. R.S.17:23-1 is amended to read as follows:

Statements; format; preparation.

17:23-1. Every insurance company transacting business in this State shall annually, on or before March 1, file in the department a statement, subscribed and sworn to by its president and secretary, or, in their absence, by two of its principal officers, showing its financial condition at the close of business on December 31 of the year last preceding, and its business for that year in the format adopted by the National Association of Insurance Commissioners and in use at the time the statement is due. The annual statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual

adopted by the National Association of Insurance Commissioners, and all applicable provisions of law. Additionally, every insurance company shall file quarterly statements in the format adopted by the National Association of Insurance Commissioners covering the periods ending on March 31, June 30 and September 30, which shall be filed within 45 days after each such date. Quarterly statements shall be confidential and shall not be subject to public inspection or copying pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). All statements shall be submitted in the form and contain any additional matters the commissioner prescribes. The commissioner may also address any inquiries to the company or its officers in relation to its condition or affairs, or any matter connected with its transactions, and the officers of the company shall promptly reply in writing to all the inquiries. The commissioner may, for good cause, extend the time within which the statement or any part thereof may be filed. The annual and quarterly statements of a company of a foreign country shall embrace only its business and condition in the United States, and shall be subscribed and sworn to by its resident manager or principal representative in charge of its American business.

If an insurance company domiciled in this State makes a request in writing no more than 60 days prior to December 1, the commissioner shall, annually, in the month of December furnish to that company one or more blanks in the form of the statement adopted by the National Association of Insurance Commissioners and in use at the time furnished. The commissioner shall have power to make from time to time such modifications and additions in such form and the matters contained therein as he may deem desirable or necessary to ascertain the condition and affairs of the company.

C.17:24-5.1 Valuation of securities held by insurance company; violations; penalties.

4. Except as otherwise required by the commissioner, securities held by an insurance company transacting business in this State in accordance with the provisions of Title 17 of the Revised Statutes shall be valued in accordance with the published valuation standards of the Securities Valuation Office of the National Association of Insurance Commissioners. Every insurance company licensed to transact business in this State shall comply with the filing and valuation requirements of the Securities Valuation Office of the National Association of Insurance Commissioners or requirements established by the commissioner, as applicable, with

respect to the valuation of securities. Any insurance company that fails to comply with the provisions of this section shall be subject to a penalty of not less than \$1,000 nor more than \$5,000 for a first violation, and not less than \$2,000 nor more than \$10,000 for each subsequent violation.

5. Section 54 of P.L.1975, c.106 (C.17:46B-55) is amended to read as follows:

C.17:46B-55 Annual statements of title insurance companies; form and content.

54. Annual statements of title insurance companies; form and content.

a. Every title insurance company which is authorized to do a title insurance business in this State, shall file in the office of the commissioner annually, on or before March 1, a statement, to be known as its annual statement, executed in duplicate, verified by the oath of at least two of its principal officers, showing its condition on December 31 then next preceding in the format adopted by the National Association of Insurance Commissioners and in use at the time the statement is due. The annual statement shall be prepared in accordance with the annual statement instructions and the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners, and all applicable provisions of law. Additionally, every title insurance company shall file quarterly statements in the format adopted by the National Association of Insurance Commissioners covering the periods ending on March 31, June 30 and September 30, which shall be filed within 45 days after each such date. Quarterly statements shall be confidential and shall not be subject to public inspection or copying pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.). All statements shall be submitted in the form and contain any additional matters the commissioner prescribes.

b. If a title insurance company domiciled in this State makes a request in writing no more than 60 days prior to December 1, the commissioner shall annually, in the month of December, furnish to that company one or more blanks in the form of the statement adopted by the National Association of Insurance Commissioners, and in use at the time furnished.

C.17:46B-22.1 Valuation of securities held by title insurance company; violations; penalties.

6. Except as otherwise required by the commissioner, securities held by a title insurance company transacting business in this State in accordance with P.L.1975, c.106 (C.17:46B-1 et seq.),

shall be valued in accordance with the published valuation standards of the Securities Valuation Office of the National Association of Insurance Commissioners. Every title insurance company licensed to transact business in this State shall comply with the filing and valuation requirements of the Securities Valuation Office of the National Association of Insurance Commissioners or requirements established by the commissioner, as applicable, with respect to the valuation of securities. Any title insurance company that fails to comply with the provisions of this section shall be subject to a penalty of not less than \$1,000 nor more than \$5,000 for a first violation, and not less than \$2,000 nor more than \$10,000 for each subsequent violation.

7. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 243

AN ACT concerning reinsurance, amending P.L.1960, c.32 and supplementing Title 17 of the Revised Statutes.

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

C.17:51B-1 Definitions.

1. For purposes of this act:

“Commissioner” means the Commissioner of Insurance.

“Insurer” means:

(1) Any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the New Jersey Statutes;

(2) Any medical service corporation operating pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.);

(3) Any hospital service corporation operating pursuant to P.L.1938, c.366 (C.17:48-1 et seq.);

(4) Any health service corporation operating pursuant to P.L.1985, c.236 (C.17:48E-1 et al.); and

(5) Any dental service corporation operating pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.).

“NAIC” means the National Association of Insurance Commissioners.

“Qualified United States financial institution,” (1) as used in subsection c. of section 3 of this act, means an institution that: (a) is organized or, in the case of a branch or agency office of a foreign banking organization in the United States, licensed, under the laws of the United States or any state thereof; (b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and (c) has been determined by either the commissioner, or the Securities Valuation Office of the NAIC, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner; or (2) as used elsewhere in this act, means an institution that: (a) is organized or, in the case of a branch or agency office of a foreign banking organization in the United States, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and (b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

C.17:51B-2 Credit for reinsurance ceded by certain insurers.

2. Credit for reinsurance ceded by an insurer which is domiciled in New Jersey, or which is either licensed in New Jersey or eligible to write surplus lines insurance in New Jersey and which in either case is domiciled in a state or country which does not employ standards regarding credit for reinsurance substantially similar, as determined by the commissioner, to those applicable under this act, shall be allowed as either an asset or a deduction from liability only when:

a. The reinsurance is ceded to an assuming insurer which is licensed to transact insurance or reinsurance in this State; or

b. The reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this State. An accredited reinsurer is one which:

(1) Files with the commissioner evidence of its submission to this State’s jurisdiction;

(2) Submits to this State’s authority to examine its books and records;

(3) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an assuming

alien insurer, is entered through, and licensed to transact insurance or reinsurance in, at least one state;

(4) Files annually with the commissioner a copy of its annual statement filed with the insurance department or other regulatory authority of its state of domicile and a copy of its most recent audited financial statement; and either:

(a) Maintains a surplus in regard to policyholders in an amount which is not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within 120 days of its submission therefor; or

(b) Maintains a surplus in regard to policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the commissioner;

(5) Submits a filing fee in an amount established by the commissioner; and

(6) Provides any additional information, which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfies such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of operation are not such as would render its operations hazardous to the public or policyholders in this State.

No credit shall be allowed a ceding licensed insurer or unauthorized eligible surplus lines insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing; or

c. The reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an assuming alien insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this act, as determined by the commissioner, and that assuming insurer or United States branch of an assuming alien insurer:

(1) Maintains a surplus in regard to policyholders in an amount of not less than \$20,000,000;

(2) Submits to the authority of this State to examine its books and records; and

(3) Provides any additional information, which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfies such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of opera-

tion are not such as would render its operations hazardous to the public or policyholders in this State;

except that the requirement of paragraph (1) of this subsection shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; or

d. The reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC Annual Statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In addition to the requirements of this subsection, the assuming insurer shall provide any additional information, which may include, but may not be limited to, information regarding the concentration of the insurer's exposures, geographic or otherwise, and satisfy such additional requirements as the commissioner deems necessary to ensure that the particular insurer's condition and methods of operation are not such as would render its operations hazardous to the public or policyholders in this State.

(1) In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000.

(2) In the case of a group of insurers, which group includes individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which not less than \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter for the fiscal period immediately preceding, which shall not be less than one year, by the group's domiciliary regulator and its independent certified public accountant.

(3) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in this section, has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, sub-

mits to this State's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of not less than \$10,000,000,000: the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus a joint trustee surplus of which not less than \$100,000,000 shall be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities; and each member of the group shall make available to the commissioner an annual certification of the member's solvency for the fiscal period immediately preceding, which shall not be less than one year, by the member's domiciliary regulator and its independent certified public accountant.

Any trust established pursuant to this subsection shall be in a form approved by the commissioner, and the content, location, legal currency and financial institutions shall be acceptable to the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year's end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31; or

e. The commissioner may, in his discretion, allow credit for reinsurance if the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection a., b., c. or d. of this section but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required or provided by applicable law or regulation of that jurisdiction.

If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by subsections c. and d. of this section shall not be allowed unless the assuming insurer agrees in the reinsurance agreements: (1) that in

the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give such court jurisdiction, and shall abide by the final decision of such court or any appellate court in the event of an appeal; and (2) to designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

C.17:51B-3 Reduction in liability for reinsurance ceded.

3. A reduction in liability for the reinsurance ceded by an insurer which is domiciled in New Jersey, or which is either licensed in New Jersey or eligible to write surplus lines insurance in New Jersey and which in either case is domiciled in a state or country which does not employ standards regarding credit for reinsurance substantially similar, as determined by the commissioner, to those applicable under this act, shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution subject to withdrawal solely by, and under the exclusive control of, the ceding insurer. This security shall be in the form of:

- a. Cash;
- b. Securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;
- c. Clean, irrevocable, evergreen, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31st of the year for which the filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of

the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming qualified United States financial institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever occurs first, unless the issuer has been declared insolvent under applicable statutory or regulatory provisions; or

d. Any other form of security acceptable to the commissioner.

4. Section 11 of P.L.1960, c.32 (C.17:22-6.45) is amended to read as follows:

C.17:22-6.45 Eligibility as surplus lines insurer.

11. No surplus lines agent shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer as provided for under this section. No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the commissioner in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by a licensed surplus lines agent;

(b) The insurer must be currently an authorized insurer in the state or country of its domicile as to the kind or kinds of insurance proposed to be so placed, and must have been such an insurer for not less than one full year preceding; or must be the subsidiary of an admitted insurer or of an already eligible surplus lines insurer that has been so admitted or eligible for a period of not less than one full year preceding;

(c) Before granting eligibility the requesting surplus lines agent or the insurer shall furnish the commissioner with duly authenticated copies of its current annual financial statement, one in the language and monetary values of the country of the insurer, and the other in the English language and with all monetary values therein expressed in United States dollars, at the current exchange rate shown in the statement, and with such additional information relative to the insurer as the commissioner may require;

(d) The insurer shall establish satisfactory evidence of financial integrity, and:

(1) Have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which is not less than twice the amount of minimum capital and surplus required for like admitted insurers. In addition, an alien insurer shall maintain in the United States an irrevocable trust fund in a state or federally chartered

bank in an amount not less than \$1,500,000.00 for the protection of all of its policyholders in the United States. The trust fund shall consist of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this State. The trust fund shall not be included in any calculation of capital and surplus or its equivalent and shall have an expiration date which at no time shall be less than five years. In lieu of the above capital and surplus requirements, and trust fund amount, any Lloyd's or other similar group of alien insurers, which group includes unincorporated individual insurers shall maintain a trust fund of not less than \$50,000,000.00 as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and the trust shall likewise comply with the terms and conditions hereinabove set forth. Any insurance exchange created by the laws of an individual state may be approved by the commissioner as an eligible insurer under the provisions of this section, and shall maintain capital and surplus, or the substantial equivalent thereof, of not less than \$35,000,000.00 in the aggregate. For insurance exchanges which maintain funds in an amount acceptable to the commissioner for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than \$2,000,000.00. In the event the insurance exchange does not maintain funds in an amount acceptable to the commissioner for the protection of all insurance exchange policyholders, each individual syndicate shall have capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which is not less than twice the amount of minimum capital and surplus required for like admitted insurers. No insurance exchange approved as an eligible insurer by the commissioner shall be a member of the New Jersey Surplus Lines Insurance Guaranty Fund created pursuant to P.L.1984, c.101 (C.17:22-6.70 et al.) nor shall any claim against an exchange be deemed to be a covered claim pursuant to the provision of that act; and

(2) Have caused to be provided to the commissioner a copy of its current annual statement certified by the insurer, which, relative to the period reported upon, is no more than 18 months old, and which is either: (A) filed with and approved by the regulatory authority in the domicile of the unauthorized insurer; or (B) certi-

fied by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile. In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported upon;

(e) The condition or methods of operation of the insurer must not be such as would render its operation hazardous to the public or its policyholders in this State;

(f) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims;

(g) No insurer shall be eligible the management of which is found by the commissioner to be incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public; or which the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person or persons whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public;

(h) No insurer shall be eligible the voting control or ownership of which is held in whole or substantial part by any government or governmental agency, or which is operated for or by any such government or agency. Membership in a mutual insurer, or subscribership in a reciprocal insurer, or ownership of stock of an insurer by the alien property custodian or similar official of the United States, or supervision of an insurer by public insurance supervisory authority shall not be deemed to be an ownership, control, or operation of the insurer for the purposes of this subsection.

The commissioner shall from time to time publish a list of all currently eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines agent at his office last of record with the commissioner.

This section shall not be deemed to cast upon the commissioner any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the commissioner, shall indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the commissioner has no credible evidence to the contrary.

Where it appears that any particular insurance risk which is eligible for export, but insurance coverage thereon, in whole or in part, is not procurable from the eligible surplus lines insurers, then the surplus lines agent may file a supplemental affidavit stat-

ing such facts and advising the commissioner that such part of the risk as shall be unprocurable, as aforesaid, is being placed with named unauthorized insurers, in the amounts and percentages set forth in the affidavit. Such named unauthorized insurer shall, however, before accepting any risk in this State, deposit with the commissioner United States government bonds in an amount acceptable to the commissioner, which shall be held by said commissioner for the benefit of New Jersey policyholders only and the surplus lines agent shall procure from such unauthorized insurer and file with the commissioner a certified copy of its current annual statement of financial condition. If such deposit is made and the statement reveals, including both capital and surplus, net assets of at least \$500,000.00 consisting of at least \$300,000.00 liquid assets, then the surplus lines agent may proceed to consummate the contract of insurance. Whenever any insurance risk or any part thereof is placed with an unauthorized insurer, as provided herein, the policy, binder or cover note shall bear conspicuously on its face in boldface type the following notation: "All or some of the insurers participating in this risk have not been admitted to transact business in the State of New Jersey, nor have they been approved as a surplus lines insurer by the insurance commissioner of this State. The placing of such insurance by a duly licensed surplus lines agent in this State shall not be construed as approval of such insurer by the insurance commissioner of the State of New Jersey." All other provisions of this Title shall apply to such placement the same as if such risks were placed with an eligible surplus lines insurer.

C.17:51B-4 Rules, regulations.

5. The commissioner may promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes of this act.

6. This act shall take effect immediately and apply to all cessions after the effective date of this act under reinsurance agreements with an inception, anniversary or renewal date on or after the 180th day following the effective date of this act.

Approved August 9, 1993.

CHAPTER 244

AN ACT providing for the regulation of reinsurance intermediaries.

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

C.17:22E-1 Definitions.

1. As used in this act:

“Commissioner” means the Commissioner of Insurance.

“Controlling person” means a person which directly or indirectly has the power to direct, or cause to be directed, the management, control or activities of the reinsurance intermediary.

“Insurer” means:

(1) A corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes or Subtitle 3 of Title 17B of the New Jersey Statutes;

(2) A medical service corporation operating pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.);

(3) A hospital service corporation operating pursuant to P.L.1938, c.366 (C.17:48-1 et seq.);

(4) A health service corporation operating pursuant to P.L.1985, c.236 (C.17:48E-1 et al.); and

(5) A dental service corporation operating pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.).

“Producer” means a person engaged in the business of an insurance agent, insurance broker or insurance consultant pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.).

“Reinsurance intermediary” means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

“Reinsurance intermediary-broker” means a person, other than an officer or employee of the ceding insurer, which solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of that insurer.

“Reinsurance intermediary-manager” means a person which has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for that reinsurer whether known as a reinsurance intermediary-manager, manager or other similar term, except that the following

persons shall not be considered a reinsurance intermediary-manager, with respect to that reinsurer, for the purposes of this act:

- (1) An employee of the reinsurer;
- (2) A United States manager of a United States branch of an alien reinsurer;
- (3) An underwriting manager which, pursuant to contract, manages all or part of the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to P.L.1970, c.22 (C.17:27A-1 et seq.), and whose compensation is not solely based on the volume of premiums written;
- (4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance commissioner or other similar regulatory officer of the state in which the manager's principal business office is located;
- (5) A licensed attorney-at-law who negotiates contracts or provides general financial counsel provided no commission or brokerage fee is provided.

"Reinsurer" means any person which engages in the activity of insuring part or all of an insurance risk from an originating or ceding insurer.

"To be in violation" means that a reinsurance intermediary, or the insurer or reinsurer for which the reinsurance intermediary was acting, failed to substantially comply with the provisions of this act.

"Qualified United States financial institution" means an institution that:

- (1) Is organized, or in the case of a branch or agency office of a foreign banking organization in the United States, licensed, under the laws of the United States or any state thereof;
- (2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the commissioner, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

C.17:22E-2 Licensing of intermediary-broker, intermediary-manager.

2. a. No person shall act as a reinsurance intermediary-broker or reinsurance intermediary-manager in this State unless licensed as a producer in this State.

b. No insurer or reinsurer shall continue to utilize the services of a reinsurance intermediary on and after the effective date of this act unless utilization is in compliance with this act.

C.17:22E-3 Requirements for intermediary-manager.

3. The commissioner may require a reinsurance intermediary-manager to:

a. File a bond in an amount and from an insurer acceptable to the commissioner for the protection of the reinsurer; and

b. Maintain an errors and omissions policy in an amount acceptable to the commissioner.

C.17:22E-4 Authorization to act as reinsurance intermediary.

4. a. The commissioner shall authorize a person to act as a reinsurance intermediary if that person has complied with the requirements of this act. Such authorization to a firm or association shall authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the authorization, and all those persons shall be named in the application and any supplements thereto. An authorization to a corporation shall authorize all of the officers, and any designated employees and directors thereof, to act as reinsurance intermediaries on behalf of the corporation, and all those persons shall be named in the application and any supplements thereto.

b. If the applicant seeking authorization to act as a reinsurance intermediary is a nonresident, the applicant, as a condition precedent to receiving or holding such authorization, shall designate the commissioner as agent for service of process; and also shall furnish the commissioner with the name and address of a resident of this State upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. The person shall within 30 days notify the commissioner in writing of every change in its designated agent for service of process, and such change shall not become effective until acknowledged by the commissioner.

C.17:22E-5 Refusal of authorization.

5. The commissioner may refuse to authorize a person to act as a reinsurance intermediary if, in his judgment, the person, anyone named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of these persons have given cause for

revocation or suspension of that authorization, or have failed to comply with any prerequisite for that authorization. Upon written request therefor, the commissioner shall furnish a summary of the basis for refusal of such authorization, which document shall be privileged and not subject to P.L.1963, c.73 (C.47:1A-1 et seq.).

C.17:22E-6 Written contract required for transactions between reinsurance intermediary-broker, insurer.

6. Transactions between a reinsurance intermediary-broker and the insurer it represents in that capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party. The contract shall, at a minimum, provide that:

a. The insurer may terminate the reinsurance intermediary-broker's authority at any time;

b. The reinsurance intermediary-broker shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the reinsurance intermediary-broker, and remit all funds due to the insurer within 30 days of receipt;

c. All funds collected for the insurer's account shall be held by the reinsurance intermediary-broker in a fiduciary capacity in a qualified United States financial institution;

d. The reinsurance intermediary-broker shall comply with sections 7 and 8 of this act;

e. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and

f. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

C.17:22E-7 Records of transactions.

7. For at least 10 years after the expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing:

a. The type of contract, limits, underwriting restrictions, classes or risks and territory;

b. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

c. Reporting and settlement requirements of balances;

d. Rate used to compute the reinsurance premium;

- e. Names and addresses of assuming reinsurers;
- f. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;
- g. Related correspondence and memoranda;
- h. Proof of placement;
- i. Details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- j. Financial records, including, but not limited to, premium and loss accounts; and
- k. When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a ceding licensed insurer:
 - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

C.17:22E-8 Access to intermediary-broker records by insurer.

8. The insurer shall have access and the right to copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

C.17:22E-9 Authorization as reinsurance intermediary-broker required.

9. An insurer shall not engage the services of any person to act as a reinsurance intermediary-broker on its behalf unless that person is authorized pursuant to section 4 of this act.

C.17:22E-10 Employment restrictions.

10. An insurer shall not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business, unless the reinsurance intermediary-broker is under common control with the insurer and subject to P.L.1970, c.22 (C.17:27A-1 et seq.).

C.17:22E-11 Annual statement of financial condition to insurer.

11. A reinsurance intermediary-broker shall annually send a copy of statements of its financial condition to each insurer with which it transacts business.

C.17:22E-12 Written contract required for transactions between reinsurance intermediary-manager and reinsurer.

12. Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity shall only be entered into pursuant to a written contract, specifying the responsibilities

of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through a reinsurance intermediary-manager, a true copy of the approved contract shall be filed with the commissioner for approval. The contract shall, at a minimum, provide that:

a. The reinsurer may immediately terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination;

b. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by, or owing to, the reinsurance intermediary-manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;

c. All funds collected for the reinsurer's account shall be held by the reinsurance intermediary-manager in a fiduciary capacity in a qualified United States financial institution. The reinsurance intermediary-manager shall not retain more than three months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents;

d. For at least 10 years after the expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(1) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(2) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(3) Reporting and settlement requirements of balances;

(4) Rate used to compute the reinsurance premium;

(5) Names and addresses of reinsurers;

(6) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(7) Related correspondence and memoranda;

(8) Proof of placement;

(9) Details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by section 17 of this act,

including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(10) Financial records, including, but not limited to, premium and loss accounts; and

(11) When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(a) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(b) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that such reinsurer has delegated binding authority to the representative;

e. The reinsurer shall have access and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer;

f. The contract shall not be assigned in whole or in part by the reinsurance intermediary-manager;

g. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks;

h. The rates, terms and purposes of commissions, charges and other fees which the reinsurance intermediary-manager may levy against the reinsurer shall be set forth;

i. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(1) All claims shall be reported to the reinsurer in a timely manner;

(2) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(a) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(b) Involves a coverage dispute;

(c) May exceed the reinsurance intermediary-manager's claims settlement authority;

(d) Is open for more than six months; or

(e) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(3) All claims files shall be the joint property of the reinsurer and reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the claims files shall become the sole property of the reinsurer or its estate, except that the reinsurance intermediary-manager shall have reasonable access to and the right to copy the files on a timely basis;

(4) Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;

j. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, those interim profits shall not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business, or a later period set by the commissioner for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to section 16 of this act;

k. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified public accountant;

l. The reinsurer shall at least biannually conduct a procedural audit of the underwriting and claims processing operations of the reinsurance intermediary-manager;

m. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to a contract;

n. Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting; and

o. Any addendum to the contract shall be approved by the reinsurer's board of directors and shall be filed with the commissioner within 30 days of approval by the board of directors for the commissioner's approval. No addendum to the contract shall take effect until approved by the commissioner.

C.17:22E-13 Prohibitions for reinsurance intermediary-manager.

13. The reinsurance intermediary-manager shall not:

a. Cede retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for such retrocessions. The guidelines shall include a list of reinsurers with which such automatic agreements are in effect, and for each such reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules;

b. Commit the reinsurer to participate in reinsurance syndicates;

c. Appoint any producer without assuring that the producer is lawfully licensed to transact the type of reinsurance for which he is appointed;

d. Without prior approval of the reinsurer, pay, or commit the reinsurer to pay, a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholders' surplus as of December 31 of the last complete calendar year;

e. Collect any payment from a retrocessionaire, or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report shall be promptly forwarded to the reinsurer;

f. Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to P.L.1970, c.22 (C.17:27A-1 et seq.); and

g. Appoint a sub-reinsurance intermediary-manager.

C.17:22E-14 Authorization as reinsurance intermediary-manager required.

14. A reinsurer shall not engage the services of any person to act as a reinsurance intermediary-manager on its behalf unless such person is authorized pursuant to section 4 of this act.

C.17:22E-15 Annual statement of financial condition to reinsurer.

15. A reinsurance intermediary-manager shall annually send a copy of statements of its financial condition to each reinsurer with which it transacts business. Such statements shall be prepared by an independent certified public accountant in a form acceptable to the commissioner.

C.17:22E-16 Adequacy of loss reserves.

16. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually, or more frequently at the commissioner's discretion, obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. The loss reserve opinion shall be in the format and otherwise satisfy all requirements established by the commissioner for loss reserve opinions required to be submitted by licensed insurers in this State. This opinion shall be in addition to any other loss reserve certification required in this State.

C.17:22E-17 Binding authority for retrocessional contracts, reinsurance syndicates.

17. Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary-manager.

C.17:22E-18 Written notice of contract termination.

18. Within 15 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of that termination to the commissioner. Notice of termination shall be on a form prescribed by the commissioner and shall indicate the date of termination and the reason therefor. Agency appointment shall not terminate until notice of termination has been received by the commissioner.

C.17:22E-19 Restrictions on appointment of board of directors.

19. A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary-manager. This section shall not apply to relationships governed by P.L.1970, c.22 (C.17:27A-1 et seq.) or, if applicable, any laws governing business transacted by producer-controlled property and casualty insurers in this State.

C.17:22E-20 Examination of reinsurance intermediary.

20. A reinsurance intermediary shall be subject to examination by the commissioner. The commissioner shall have access to all books, bank accounts and records of the reinsurance intermediary in a form usable by the commissioner. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

C.17:22E-21 Violations; penalties.

21. a. If the commissioner finds, after notice and opportunity for a hearing, that a reinsurance intermediary, insurer or reinsurer is in violation of any provision of this act, the commissioner may refuse to issue or renew its license, or may revoke or suspend its license.

b. In addition or as an alternative to any other penalty, the commissioner may:

(1) Impose a penalty of not more than \$5,000 for a first violation, and not more than \$10,000 for each subsequent violation, and in appropriate circumstances order restitution of moneys owed to any person and reimbursement of the costs of investigation and prosecution;

(2) If a violation was committed by the reinsurance intermediary, order the restitution to the insurer, reinsurer or rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

c. If the commissioner finds that the interests of the public require that immediate action be taken prior to completion of the hearing, the making of a determination and the entry of a final order, he may enter an appropriate order to be effective pending

completion of the hearing and entry of a final order. These orders may be entered on ex parte proofs if the proofs indicate that the commissioner's withholding of any action until completion of a full hearing will be harmful to the public interest. Orders issued pursuant to this subsection shall be subject to an application to vacate upon 10 days' notice, and a preliminary hearing on the ex parte order shall be held in any event within 20 days after it is entered. In the alternative, or in addition, the commissioner is authorized to institute a proceeding in the Superior Court, to be conducted in a summary manner, for an injunction against specified acts or conduct in aid of the proceedings pending before him, including temporary injunctions and interim restraints.

d. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided by the laws of this State.

C.17:22E-22 Rights not restricted, limited.

22. Nothing contained in this act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or confer any rights to such persons.

C.17:22E-23 Rules, regulations.

23. The commissioner may promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the purposes of this act.

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

Approved August 9, 1993.

CHAPTER 245

AN ACT concerning the administrative supervision of insurers and other entities.

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

C.17:51A-1 Definitions.

1. For the purposes of this act:

"Commissioner" means the Commissioner of Insurance.

"Department" means the Department of Insurance.

“Insurer” means every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuities, and authorized to do business in this State pursuant to Title 17 of the Revised Statutes or Title 17B of the New Jersey Statutes. Insurer shall also include any other entity subject to rehabilitation, liquidation, reorganization or conservation by the commissioner under the laws of this State.

“Exceeded its powers” means any of the following conditions:

- a. The insurer has refused to permit examination of its books, papers, accounts or affairs by the commissioner, his deputies, employees or duly commissioned examiners;
- b. A domestic insurer has unlawfully or willfully removed from this State books, papers, accounts or records necessary for an examination of the insurer;
- c. The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;
- d. The insurer has failed to comply with an order of the commissioner to remedy a prohibited deficiency in its capital, capital stock or surplus;
- e. The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;
- f. The insurer, by contract or otherwise, has unlawfully:
 - (1) Totally reinsured its entire outstanding business; or
 - (2) Merged or consolidated substantially its entire property or business with another insurer;
- g. The insurer engaged in any transaction in which it is not authorized to engage under the laws of this State; or
- h. The insurer has refused to comply with an order of the commissioner.

C.17:51A-2 Application of act.

2. The provisions of this act shall apply to: all domestic insurers; any other insurer doing business in this State whose state of domicile has asked the commissioner to apply the provisions of this act in regard to such insurer; and any other entity subject to rehabilitation, liquidation, reorganization or conservation by the commissioner under the laws of this State.

C.17:51A-3 Administrative supervision of insurer.

3. a. An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner’s discretion that:

(1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds;

(2) The insurer has or appears to have exceeded its powers;

(3) The insurer has failed to comply with the applicable provisions of the insurance statutes of this State, any administrative rules promulgated thereunder or any order of the commissioner;

(4) The business of the insurer is being conducted fraudulently; or

(5) The insurer has consented to administrative supervision.

b. If the commissioner determines that any of the conditions set forth in subsection a. of this section exist, the commissioner shall:

(1) Notify the insurer of his determination;

(2) Furnish to the insurer a written list of actions to be taken by the insurer to abate the conditions giving rise to the determination; and

(3) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of this act.

c. If placed under administrative supervision, the insurer shall have 60 days, or another period of time as designated by the commissioner, to comply with the requirements imposed by the commissioner.

d. If the conditions giving rise to the supervision still exist at the end of the supervision period specified in subsection c. of this section, the commissioner may, after notice and opportunity to be heard, extend such period.

e. If the commissioner determines that the conditions giving rise to the supervision have been sufficiently remedied, the commissioner shall release the insurer from supervision.

C.17:51A-4 Confidentiality of information; exceptions.

4. a. Proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the commissioner or the department relating to the supervision of any insurer are confidential except as provided by this section.

b. The personnel of the department shall have access to these proceedings, hearings, notices, correspondence, reports, records or information as permitted by the commissioner.

c. The commissioner may open the proceedings or hearings or disclose the notices, correspondence, reports, records or information to a department, agency or instrumentality of this or another state of the United States if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States.

d. The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records or other information to the public if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer, its insureds or creditors.

e. This section does not apply to hearings, notices, correspondence, reports, records or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

C.17:51A-5 Powers of supervision.

5. During the period of supervision, the commissioner or his designated appointee shall serve as the administrative supervisor. The commissioner may prohibit the insurer from doing any of the following during the period of supervision, without the prior approval of the administrative supervisor:

- a. Dispose of, convey or encumber any of its assets or its business in force;
- b. Withdraw any of its bank accounts;
- c. Lend any of its funds;
- d. Invest any of its funds;
- e. Transfer any of its property;
- f. Incur any debt, obligation or liability;
- g. Merge or consolidate with another company;
- h. Approve new premiums or renew any policies;
- i. Enter into any reinsurance contract or treaty;
- j. Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums;
- k. Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;
- l. Make any material change in management;
- m. Increase salaries and benefits of officers, directors, or employees, or the payment of bonuses, dividends or other payments; or
- n. Such other acts as the commissioner deems necessary to protect the interests of the insurer's policyholders and the public.

C.17:51A-6 Contesting of action.

6. During the period of supervision the insurer may contest an action taken or proposed to be taken by the administrative supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer.

C.17:51A-7 Initiation of judicial proceedings.

7. Nothing contained in this act shall preclude the commissioner from initiating judicial proceedings to place an insurer in conserva-

tion, rehabilitation or liquidation, or other delinquency proceedings, however designated under the laws of this State, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this act against the insurer.

C.17:51A-8 Rules, regulations.

8. The commissioner may, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate rules and regulations as are necessary to effectuate the purposes of this act.

C.17:51A-9 Commissioner may meet with supervisor, attorney, representative.

9. Notwithstanding any other provision of law to the contrary, the commissioner may meet with a supervisor appointed under this act and with the attorney or other representative of the supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this act to carry out the commissioner's duties under this act or for the supervisor to carry out his duties under this act.

C.17:51A-10 Governmental immunity.

10. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner, the department or its employees or agents for any action taken by them in the performance of their powers and duties under this act.

11. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 246

AN ACT concerning the powers of parole officers and amending N.J.S.2A:154-4 and N.J.S.2C:39-6.

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

1. Section 1 of P.L.1968, c.427 (C.2A:154-4) is amended to read as follows:

C.2A:154-4 Corrections, parole officers, corrections investigators authorized to exercise police powers.

1. All correction officers of the State of New Jersey, parole officers employed by the Bureau of Parole in the Department of

Corrections and investigators in the Department of Corrections, who have been or who may hereafter be appointed or employed, shall, by virtue of such appointment or employment and in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against 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; or

(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.

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) A person who has not been convicted of a crime under the laws of this State or under the laws of another state or the United States, and who is employed as a full-time security guard for a nuclear power plant under the license of the Nuclear Regulatory Commission, while in the actual performance of his official duties;

(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); or

(13) A parole officer employed by the Bureau of Parole in the Department of Corrections 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.

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 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.

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 para-

graph (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.

C.43:16A-1.4 Enrollment of parole officers.

3. If the Board of Trustees of the Police and Fireman's Retirement System of New Jersey makes a determination, pursuant to section 9 of P.L.1989, c.204 (C.43:16A-1.2), that the parole officers employed by the Bureau of Parole in the Department of Corrections are eligible for membership in the Police and Firemen's Retirement System pursuant to section 1 of P.L.1944, c.255 (C. 43:16A-1), the enrollment of those parole officers shall occur no earlier than one year after the effective date of this section pursuant to P.L.1993, c.246 (C.43:16A-1.4 et al.).

4. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 247

AN ACT concerning membership in the Police and Firemen's Retirement System of New Jersey and the payment of certain employer contributions and supplementing P.L.1944, c.255 (C.43:16A-1 et seq.).

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

C.43:16A-3.8 Eligibility for membership in PFRS, transfers from PERS.

1. a. The following are eligible, regardless of age, to become members of the Police and Firemen's Retirement System of New Jersey (PFRS) as provided in this supplementary act:

(1) any policeman or fireman employed on the effective date of this supplementary act by a municipality, which was not required to participate in PFRS under section 3 of P.L.1944, c.255 (C.43:16A-3) and has not adopted that act, who meets the require-

ments for membership in PFRS as set forth in the definitions of "Policeman" and "Fireman" in section 1 of that act, as amended and supplemented, and who is enrolled in the Public Employees' Retirement System of New Jersey (PERS) on that date;

(2) any policeman employed on the effective date of this supplementary act by a county who is enrolled in PERS on that date;

(3) any sheriff's officer, sergeant sheriff's officer, lieutenant sheriff's officer, captain sheriff's officer, chief sheriff's officer, or sheriff's investigator employed on the effective date of this supplementary act in the offices of the county sheriffs who is enrolled in PERS on that date;

(4) any correction officer, senior correction officer, correction officer sergeant, correction officer lieutenant, correction officer captain, investigator, senior investigator, principal investigator, assistant chief investigator, chief investigator, or director of custody operations I, II, III employed on the effective date of this supplementary act in the Department of Corrections who is enrolled in PERS on that date;

(5) any county correction officer, county correction sergeant, county correction lieutenant, county correction captain, or county deputy warden employed on the effective date of this supplementary act in the several county jails who is enrolled in PERS on that date;

(6) any principal inspector employed on the effective date of this supplementary act in the Alcoholic Beverage Control Enforcement Bureau, Department of Law and Public Safety who is enrolled in PERS on that date;

(7) any police officer, police sergeant, or police lieutenant employed on the effective date of this supplementary act in the Department of Human Services who is enrolled in PERS on that date; and

(8) any fireman employed on the effective date of this supplementary act by a fire district in which the provisions of P.L.1944, c.255 (C.43:16A-1 et seq.) are not operative who meets the requirements for membership in PFRS as set forth in the definition of "Fireman" in section 1 of that act, as amended and supplemented, and who is enrolled in PERS on that date.

b. Any person eligible pursuant to subsection a. of this section to become a member of PFRS may, regardless of age, transfer membership from PERS to PFRS in accordance with the provisions of the law and regulations governing the retirement system relative to interfund transfers by waiving, within 90 days of the effective date of this supplementary act, all rights and benefits which would otherwise be provided by PERS. If an eligible person does not file a timely waiver of PERS benefits, the person's pen-

sion status shall remain unchanged and the person's membership shall not be transferred to PFRS. Transfers under this section shall take effect on the first day of the first full calendar month following the effective date of this supplementary act by at least 180 days. PERS shall transmit to PFRS an amount equal to the present value of the benefit under PERS accrued to the date of transfer by each person transferring to PFRS. The service credit accrued in PERS to the date of transfer shall be transferred to PFRS and may be used to meet any service credit requirement for benefits under PFRS. Any benefit of a member who transfers membership from PERS to PFRS under this supplementary act based upon service credit shall be the amount of benefit determined as provided under PFRS based upon the total amount of service credit multiplied by the ratio of the service credit under PFRS from the date of transfer to the total amount of service credit, plus a benefit comparable to a PERS deferred, early or regular service retirement benefit, as appropriate, based upon the age of the member at the time of retirement and the amount of PERS service credit transferred to PFRS, determined as provided under the law and regulations governing PERS for the benefit. The total amount of service credit in PFRS, including the transferred PERS service credit, may be used to meet the service credit requirement for the benefit comparable to a PERS deferred or early retirement benefit, but the benefit shall be calculated only on the transferred PERS service credit.

Active and retired death benefits, accidental death benefits, and ordinary and accidental disability retirement benefits for members transferring to PFRS under this supplementary act shall be the benefits provided under PFRS.

For members transferring to PFRS under this supplementary act, the widows' or widowers' pensions provided under section 26 of P.L.1967, c.250 (C.43:16A-12.1) shall be the amount of the benefit determined as provided in section 26 multiplied by the ratio of the service credit under PFRS from the date of transfer to the total amount of service credit. Transferring members shall be entitled to elect optional retirement allowances for the portions of their retirement benefits based upon their PERS service credit as provided under the laws and regulations governing selection of optional retirement allowances under PERS.

C.43:16A-3.9 Enrollment required.

2. A policeman or fireman employed after the effective date of this supplementary act by a municipality, which was not required to participate in PFRS under section 3 of P.L.1944, c.255

(C.43:16A-3) and has not adopted that act, and a fireman employed after the effective date of this supplementary act by a fire district in which the provisions of P.L.1944, c.255 are not operative on that effective date, who meets the requirements for membership in the PFRS shall be required to enroll in the retirement system as a condition of employment.

C.43:16A-3.10 Credit for transferred service.

3. a. Notwithstanding the provisions of section 1 of this supplementary act, a policeman or fireman who is eligible pursuant to paragraph (1) or paragraph (8) of subsection a. of that section to become a member of PFRS and who transfers membership from PERS to PFRS may receive full credit toward benefits under PFRS for the transferred PERS service credit if:

(1) the act of which this act is a supplement is adopted by the legal voters of the municipality or the fire district as provided in section 10 of P.L.1945, c.148 (C.43:16A-26); or

(2) the member agrees to pay the full cost of the accrued liability for the transferred PERS service credit in the same manner and subject to the same terms and conditions provided for the purchase of credit for military service under P.L.1991, c.153.

b. Notwithstanding the provisions of section 1 of this supplementary act, any person who is eligible pursuant to paragraph (2), (3), (4), (5), (6) or (7) of subsection a. of that section to become a member of PFRS and who transfers membership from PERS to PFRS may receive full credit toward benefits under PFRS for the transferred PERS service credit if the member agrees to pay the full cost of the accrued liability for the transferred PERS service credit in the same manner and subject to the same terms and conditions provided for the purchase of credit for military service under P.L.1991, c.153.

C.43:16A-3.11 Liability of State, municipality for certain employer contributions.

4. a. The State shall be liable, during their membership following transfer from PERS to PFRS, for the difference between what the employer would pay under PERS and what the employer would pay under PFRS for the members of PERS who transfer membership from PERS to PFRS pursuant to this supplementary act.

b. The municipality or the fire district, as the case may be, shall be liable for employer contributions for any policeman or fireman employed after the effective date of this supplementary act who is enrolled in PFRS as provided by section 2 of this act.

C.43:16A-3.12 Noneligibility for additional benefits.

5. A person transferring to PFRS under this supplementary act shall not be eligible to receive any benefit provided under P.L.1993, c.99 unless the person receives full credit toward benefits under PFRS for the transferred PERS service credit as provided in section 3 of this supplementary act.

C.43:16A-3.13 Liability of State for contributions on members for PFRS adopted after 1991 and before August 9, 1993.

6. For municipalities in which the provisions of P.L.1944, c.255 (C.43:16A-1 et seq.) took effect on or after January 1, 1992 and prior to the effective date of this supplementary act as a result of a referendum in the municipality or the adoption of an ordinance or resolution by the governing body of the municipality as provided by law, the State shall be liable, beginning with the effective date of this act and continuing during their membership in PFRS, for the difference in the normal contribution between what the employer would pay under PERS and what the employer would pay under PFRS for the policemen and firemen in service prior to the date the provisions of P.L.1944, c.255 took effect in each such municipality who elected to become members of PFRS pursuant to section 13 of P.L.1945, c.148 (C.43:16A-29). The municipality, however, shall be liable for employer contributions to PFRS for any policeman or fireman whose service began or begins on or after the date those provisions took effect.

7. This act shall take effect July 1, 1993.

Approved August 9, 1993.

CHAPTER 248

**AN ACT concerning county correction officers and amending
N.J.S.2A:154-3.**

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

1. N.J.S.2A:154-3 is amended to read as follows:

Court attendants, sheriff's officers and county correction officers as peace officers, power of arrest for county correction officers.

2A:154-3. a. All court attendants, sheriff's officers and county correction officers in the competitive class of civil service who have been or who may hereafter be appointed by the sheriff or board of chosen freeholders of any county in this State shall, by virtue of such appointment and in addition to any other power or authority, be empowered to act as officers for the detection, apprehension, arrest and conviction of offenders against the law.

b. In addition to the powers set forth in subsection a. of this section, any county correction officer who has satisfactorily completed a basic training course approved by the Police Training Commission, as provided by P.L.1961, c.56 (C.52:17B-66 et seq.), shall have full power of arrest for any crime committed in his presence anywhere within the territorial limits of the State of New Jersey.

2. This act shall take effect immediately.

Approved August 9, 1993.

CHAPTER 249

AN ACT concerning the abuse, neglect and exploitation of vulnerable adults 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-406 Short title.

1. This act shall be known and may be cited as the "Adult Protective Services Act."

C.52:27D-407 Definitions.

2. As used in this act:

"Abuse" means the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation of services which are necessary to maintain a person's physical and mental health.

"Caretaker" means a person who has assumed the responsibility for the care of a vulnerable adult as a result of family relationship or who has assumed responsibility for the care of a vulnerable adult voluntarily, by contract, or by order of a court of competent jurisdiction, whether or not they reside together.

“Commissioner” means the Commissioner of Community Affairs.

“Community setting” means a private residence or any noninstitutional setting in which a person may reside alone or with others, but shall not include residential health care facilities, rooming houses or boarding homes or any other facility or living arrangement subject to licensure by, operated by, or under contract with, a State department or agency.

“County adult protective services provider” means a county Board of Social Services or other public or nonprofit agency with experience as a New Jersey provider of protective services for adults, designated by the county and approved by the commissioner. The county adult protective services provider receives reports made pursuant to this act, maintains pertinent records and provides, arranges, or recommends protective services.

“County director” means the director of a county adult protective services provider.

“Department” means the Department of Community Affairs.

“Exploitation” means the act or process of illegally or improperly using a person or his resources for another person’s profit or advantage.

“Neglect” means an act or failure to act by a vulnerable adult or his caretaker which results in the inadequate provision of care or services necessary to maintain the physical and mental health of the vulnerable adult, and which places the vulnerable adult in a situation which can result in serious injury or which is life-threatening.

“Protective services” means voluntary or court-ordered social, legal, financial, medical or psychiatric services necessary to safeguard a vulnerable adult’s rights and resources, and to protect a vulnerable adult from abuse, neglect or exploitation. Protective services include, but are not limited to: evaluating the need for services, providing or arranging for appropriate services, obtaining financial benefits to which a person is entitled, and arranging for guardianship and other legal actions.

“Vulnerable adult” means a person 18 years of age or older who resides in a community setting and who, because of a physical or mental illness, disability or deficiency, lacks sufficient understanding or capacity to make, communicate, or carry out decisions concerning his well-being and is the subject of abuse, neglect or exploitation. A person shall not be deemed to be the subject of abuse, neglect or exploitation or in need of protective services for the sole reason that the person is being furnished nonmedical remedial treatment by spiritual means through prayer alone or in accordance with a recognized religious method of

healing in lieu of medical treatment, and in accordance with the tenets and practices of the person's established religious tradition.

C.52:27D-408 Comprehensive public awareness program; task force.

3. a. The commissioner shall establish a comprehensive public awareness program to inform the general public and social service agencies as to the nature of abuse, neglect and exploitation, the method for their reporting, and information about the protective services available for vulnerable adults who need them. This comprehensive public awareness program shall be a collaborative effort with existing public awareness and training efforts, including but not limited to, those mandated pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.), the Safe Housing and Transportation program and the "Older Americans Act of 1965," Pub. L. 89-73 (42 U.S.C. §3001 et seq.).

b. A task force shall be established in the department to facilitate the collaboration required for the public awareness program. The task force shall meet at least quarterly to develop initiatives. The task force shall include a representative from each of the following: the Department of Human Services, the Department of Community Affairs, the Administrative Office of the Courts, an agency funded to administer training initiatives under this act, an agency funded to administer training initiatives under the "Older Americans Act of 1965," an agency that delivers protective services and the New Jersey Association of Area Agencies on Aging.

C.52:27D-409 Report of suspected abuse, neglect, exploitation.

4. a. A person who has reasonable cause to believe that a vulnerable adult is the subject of abuse, neglect or exploitation may report the information to the county adult protective services provider.

b. The report, if possible, shall contain the name and address of the vulnerable adult; the name and address of the caretaker, if any; the nature and possible extent of the vulnerable adult's injury or condition as a result of abuse, neglect or exploitation; and any other information that the person reporting believes may be helpful.

c. A person who reports information pursuant to this act, or provides information concerning the abuse of a vulnerable adult to the county adult protective services provider, or testifies at a grand jury, judicial or administrative proceeding resulting from the report, is immune from civil and criminal liability arising from the report, information, or testimony, unless the person acts in bad faith or with malicious purpose.

d. An employer or any other person shall not take any discriminatory or retaliatory action against an individual who reports abuse, neglect or exploitation pursuant to this act. An employer or any other person shall not discharge, demote or reduce the salary of an employee because the employee reported information in good faith pursuant to this act. A person who violates this subsection is liable for a fine of up to \$1,000.

e. A county adult protective services provider and its employees are immune from criminal and civil liability when acting in the performance of their official duties, unless their conduct is outside the scope of their employment, or constitutes a crime, actual fraud, actual malice, or willful misconduct.

C.52:27D-410 Access for reporting abuse, neglect, exploitation; evaluation.

5. a. A county adult protective services provider shall provide access for reporting abuse, neglect and exploitation. Information shall also be available to a person who reports abuse, neglect or exploitation on ways to access emergency assistance.

b. The county adult protective services provider upon receiving a report that a vulnerable adult is being or has been the subject of abuse, neglect or exploitation, shall initiate a prompt and thorough evaluation of the report within 72 hours.

c. If the county adult protective services provider is prevented from conducting an evaluation of a report of abuse, neglect or exploitation, the county adult protective services provider may petition a court of competent jurisdiction for an order to conduct the evaluation.

d. An evaluation conducted pursuant to this act shall be conducted by a person with appropriate training and experience as set forth by regulation. The evaluation shall be based upon a visit with the vulnerable adult about whom the report was made and upon consultation with others who have knowledge of the particular case to determine whether protective services are needed and what action, if any, is required.

e. Records of public agencies, private organizations, banks and other financial institutions, medical institutions and practitioners, which the county director or his designee reasonably believes to be necessary to complete the evaluation, shall be made available to the county adult protective services provider.

C.52:27D-411 Determination of need for protective services; referrals.

6. a. If a determination is made by the county adult protective services provider that there is reasonable cause to believe that the vulnerable adult has been the subject of abuse, neglect or exploi-

tation, the county adult protective services provider shall determine the need for protective services. If the vulnerable adult or his legal guardian consents, the county adult protective services provider shall provide or arrange for appropriate protective services, as may be available. The county adult protective services provider shall also make formal referrals to State, county, and local agencies, hospitals and organizations, including county offices on aging for clients age 60 and over, for services which the county adult protective services provider is unable to provide directly. The county protective services provider shall follow up on referrals to determine whether services are being provided.

b. A county protective services provider may refer a person who needs protective services and who, because of a developmental disability or mental illness, is in need of specialized care, treatment or services, to the Division of Developmental Disabilities or the Division of Mental Health and Hospitals in the Department of Human Services, as appropriate. These divisions shall consider referrals from the county adult protective services providers on a priority basis and assist in providing the specialized services needed to protect abused, neglected, or exploited vulnerable adults, including those 60 years and over.

C.52:27D-412 Petition for order enjoining caretaker from interfering with provision of services.

7. a. If the vulnerable adult's caretaker or any other person interferes with the provision of protective services, the county adult protective services provider shall petition the court for an order enjoining the caretaker or other person from interfering with the provision of services. Any other party concerned with the welfare of the vulnerable adult may also petition the court for an order enjoining the caretaker or any other person from interfering with the provision of services.

b. The petition shall present facts to show that the vulnerable adult is in need of protective services, and that, although the vulnerable adult or his guardian consents to the receipt of services, the adult's caretaker or other person has interfered with the provision of services. If the judge finds that the vulnerable adult requires protective services and that the vulnerable adult, or his guardian, consents to the services, and the vulnerable adult has been prevented from receiving the protective services by his caretaker or other person, the judge shall issue an order enjoining the caretaker or other person from further interference.

New Jersey State Library

C.52:27D-413 Petition for authorization to provide emergency protective services; hearing.

8. a. If the county director or his designee reasonably determines that an emergency exists and the vulnerable adult refuses or is unable to consent to the protective services, the county director or his designee shall petition a court of competent jurisdiction for an order authorizing the provision of protective services. The petition shall set forth the name, age and residence of the adult; the nature of the emergency; the proposed protective services; and facts sufficient to show that (1) the adult is a vulnerable adult in need of protective services as a result of abuse, neglect or exploitation; (2) the adult, without protective services, will incur a clear and substantial risk of death or immediate physical harm; (3) the adult refuses or is unable to consent to the protective services; and (4) no other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services.

b. The court shall set the case for hearing within 24 hours of receipt of a petition pursuant to this section. The adult has the right to an attorney of his choice, or the court shall appoint counsel. Every reasonable effort shall be made to provide notice of the hearing, including a copy of the petition, to the adult, his attorney, his legal guardian, his spouse or, if none, to his adult children or next of kin, and his caretaker, if any, prior to the hearing. A reasonable effort shall be made to provide for the participation of the adult at the hearing.

c. The court may waive the notice requirement and schedule an ex parte hearing immediately upon receipt of the petition if the court finds that there is a clear and substantial risk to the adult of death or irreparable injury if the order were delayed.

d. If at the hearing, the judge finds by clear and convincing evidence that (1) the adult is a vulnerable adult in need of protective services as a result of abuse, neglect or exploitation; (2) the adult, without protective services, will incur a clear and substantial risk of death or immediate physical harm; (3) the adult refuses or is unwilling to consent to services; and (4) no other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services; an order authorizing the provision of protective services shall be issued. The order may designate an individual or organization responsible for the provision or arrangement of protective services for the adult.

e. The court shall order only such protective services as are necessary to remove the conditions creating the emergency.

f. An emergency order entered under this section by the court may not exceed 72 hours. The county director or his designee, upon determining that continued services are necessary to prevent death or serious physical harm, may apply for continuation of the order for an additional 72-hour period, if a guardian has not been named. If an emergency order is entered ex parte, the vulnerable adult or any other party, on behalf of the vulnerable adult, may petition the court to have the order modified or vacated, and the court shall consider the petition on an emergent basis.

C.52:27D-414 Petition for order authorizing provision of protective services.

9. a. If the county director or his designee reasonably determines that a vulnerable adult will incur a substantial risk of physical harm or deterioration without protective services, and the adult refuses or is unable to consent to the services, the county director or his designee shall petition a court of competent jurisdiction for an order authorizing the provision of protective services. The petition shall set forth the name, age and residence of the adult; the proposed protective services; and facts sufficient to show that: (1) the adult is a vulnerable adult in need of the services as a result of abuse, neglect or exploitation; (2) the adult will incur a substantial risk of physical harm or deterioration without protective services; (3) the adult refuses or is unable to consent to the services; and (4) no other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services.

b. The court shall set the case for hearing within three court days after the filing of the petition. The adult has the right to an attorney of his choice or the court shall appoint counsel. If the vulnerable adult refuses protective services, the court may issue an order requiring a psychiatric or psychological assessment or examination to determine the vulnerable adult's understanding or capacity, and the nature of or reason for the refusal.

c. Every reasonable effort shall be made to provide notice of the hearing, including a copy of the petition to the adult, his attorney, his legal guardian, his spouse or, if none, to his adult children or next of kin, and his caretaker, if any. A reasonable effort shall be made to provide for the participation of the adult at the hearing. If there has been an assessment or an examination, the psychiatrist or the psychologist shall prepare and provide a report to the court and to the attorney for the vulnerable adult.

d. If, at the hearing, the judge finds by clear and convincing evidence that (1) the adult is a vulnerable adult in need of the ser-

vices as a result of abuse, neglect or exploitation; (2) the adult will incur a substantial risk of physical harm or deterioration without protective services; (3) the adult refuses or is unable to consent to the services; (4) that no other person authorized by law or court order to give consent for the adult is available and willing to arrange for protective services; and (5) if there has been an assessment or an examination, that the report of the psychiatrist or psychologist states that the vulnerable adult lacks the understanding or capacity to refuse the protective services, an order authorizing the provision of protective services may be issued. The order may designate an individual or organization responsible for the provision of, arrangement for, or consent for protective services on behalf of the adult.

e. A protective services order shall not exceed 30 days but may be continued for an additional 30-day period upon application of the county director or his designee and proof that the vulnerable adult would suffer a substantial risk of physical harm or deterioration if the protective services were withdrawn. The court shall not grant any further renewal of the order.

C.52:27D-415 Permanent changes in living situation not authorized.

10. Permanent changes in the living situation of an abused, neglected or exploited vulnerable adult shall not be made under authority of this act. If a permanent change in the living situation or nonemergency medical treatment are necessary, the appropriate guardianship, conservatorship or civil commitment action shall be initiated by the county adult protective services provider pursuant to applicable State law.

C.52:27D-416 Legal action.

11. In order to protect a vulnerable adult, the county director or his designee may initiate appropriate legal action including, but not limited to, petitioning for guardianship or conservatorship.

C.52:27D-417 Motion for review of court order.

12. The vulnerable adult, or individual or organization designated responsible for the provision of protective services for the vulnerable adult, has the right to bring a motion for review of a court order issued pursuant to this act, notwithstanding a finding by the court of a lack of capacity to consent to protective services.

C.52:27D-418 Payments.

13. The court may order payments to be made by or on behalf of the vulnerable adult for protective services from his own estate.

C.52:27D-419 Report of alleged criminal act.

14. If the county director or his designee has reasonable cause to believe that a caretaker or other person has committed a criminal act against a vulnerable adult including, but not limited to, P.L.1989, c.23 (C.2C:24-8), he shall immediately report the information to local law enforcement officials or the prosecutor of the county in which the alleged criminal act was committed. If the report is made orally, a written report shall follow in a timely manner.

C.52:27D-420 Confidentiality of records, communications.

15. All records and communications pertaining to any report, evaluation, or service provided pursuant to this act are confidential. All third party information, together with the identities of the reporters, witnesses and the adults allegedly in need of protective services are confidential, except disclosures which may be necessary for the commissioner or the county adult protective services provider to perform his duties and to support any findings that may result from the evaluation of a report.

C.52:27D-421 Central registry.

16. The commissioner shall establish a central registry for the receipt and maintenance of all reports of suspected abuse, neglect and exploitation of vulnerable adults. The department shall compile and maintain in the central registry demographic data on vulnerable adults, Statewide statistics related to abuse, neglect and exploitation and other information submitted by county adult protective services providers.

C.52:27D-422 Training program.

17. The commissioner or his designee shall establish a training program for county protective services provider staff which shall be offered at least annually and shall include a minimum of 90 classroom hours. This training shall be required during the first year of employment with an adult protective services provider.

C.52:27D-423 Rules, regulations.

18. The commissioner shall adopt rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be deemed necessary to effectuate the purposes of this act. The rules and regulations shall include but, not be limited to:

a. Procedures for intervention and gaining access by a county protective services provider to a vulnerable adult who is the sub-

ject of a report of abuse, neglect or exploitation, including the safeguarding of that person's civil liberties;

b. Procedures for the reporting, collection, retention and use of information secured at the county and State levels to effectuate this act;

c. Procedures for maintaining confidentiality when required or when deemed necessary;

d. Procedures for the review and evaluation of the performance of a county protective services provider; and

e. Procedures for the reallocation of State funds by the director or his designee if programs and services do not meet the requirements of this act or rules established by the commissioner.

C.52:27D-424 Annual report.

19. The commissioner shall report annually to the Governor and the Legislature on the effectiveness of this act, and make recommendations for the prevention and alleviation of the abuse, neglect and exploitation of vulnerable adults.

C.52:27D-425 Nonapplicability of act.

20. Nothing in this act shall be deemed or construed to limit or preempt the provisions of P.L.1977, c.239 (C.52:27G-1 et seq.) regarding the institutionalized elderly.

C.52:27D-426 Transfer of funding, programs, positions.

21. a. All funding, programs and positions created to provide adult protective services by the Division of Youth and Family Services in the Department of Human Services are continued and shall be transferred to the Department of Community Affairs, however, for federal funding and reporting purposes, the Department of Human Services shall remain the designated agency for such programs. The Department of Community Affairs shall provide the Department of Human Services with such information as the Department of Human Services requires to fulfill its reporting requirements.

b. The transfers directed by this act shall be made in accordance with the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

22. This act shall take effect on the 180th day after enactment.

Approved August 11, 1993.

CHAPTER 250

AN ACT concerning the regulation of physicians and supplementing Title 45 of the Revised Statutes.

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

C.45:9-22.12 Display of policy by physician of Medicare excess charge policy.

1. a. A physician licensed pursuant to the provisions of Title 45 of the Revised Statutes who provides medical services to a beneficiary of the Medicare program established pursuant to section 1801 of the federal Social Security Act (42 U.S.C. §1395 et seq.) shall prominently display in his office, and include on all billing statements to Medicare beneficiaries, his policy regarding the imposition of any charge in excess of the limiting fee for a service as determined by the United States Secretary of Health and Human Services.

b. The physician shall prominently display in his office, and inform, in writing, the State Board of Medical Examiners, of any changes in his excess charge policy before the imposition of these changes in accordance with federal regulations.

C.45:9-22.13 Letter of reprimand; civil penalty; repayment.

2. a. The State Board of Medical Examiners shall issue a letter of reprimand for the first and each subsequent offense against a physician who knowingly and willingly charges a Medicare beneficiary in a manner not in compliance with the provisions of P.L.1993, c.250 (C.45:9-22.12 et seq.). The board shall also assess a civil penalty pursuant to section 12 of P.L.1978, c.73 (C.45:1-25) of up to \$1,000 for the second and each subsequent offense against a physician who knowingly and willingly charges a Medicare beneficiary in a manner not in compliance with the provisions of P.L.1993, c.250 (C.45:9-22.12 et seq.).

b. In addition to any civil penalties the board shall assess, the board shall order a physician who is not in compliance with this act to repay the beneficiary the amount of excess payments made and received, plus interest on that amount at the maximum legal rate from the date payment was made until the date repayment is made.

C.45:9-22.14 Posting of sign required.

3. A physician who treats beneficiaries of the Medicare program established pursuant to section 1801 of the Social Security Act (42 U.S.C. §1395 et seq.) shall post a sign in his office which sets forth the following:

a. The physician's policy regarding the imposition of any charge in excess of the limiting fee for a service as determined by the United States Secretary of Health and Human Services.

b. The address and telephone number of the State Board of Medical Examiners.

C.45:9-22.15 Notice of nonprovision of Medicare services.

4. If a physician does not provide services to Medicare beneficiaries, he shall prominently display in his office an appropriate notice, and inform, in writing, the State Board of Medical Examiners.

C.45:9-22.16 Establishment of procedures for review, complaint.

5. a. The State Board of Medical Examiners shall establish procedures for reviewing a physician's billing disclosure statement, and shall print and distribute the signs which are required to be posted by a physician who treats beneficiaries of the Medicare program established pursuant to section 1801 of the Social Security Act (42 U.S.C. §1395 et seq.) under section 1 of P.L.1993, c.250 (C.45:9-22.12).

b. The board shall establish procedures by which a beneficiary of the Medicare program may initiate a complaint regarding any incident of noncompliance with the provisions of P.L.1993, c.250 (C.45:9-22.12 et seq.) with the board.

C.45:9-22.17 "Medicare Assignment Compliance Fund"; report.

6. a. All penalties collected pursuant to P.L.1993, c.250 (C.45:9-22.12 et seq.) shall be deposited in a non-lapsing revolving fund in the State Board of Medical Examiners to be known as the "Medicare Assignment Compliance Fund." The fund shall be dedicated for use by the board to offset any administrative costs incurred by the board in carrying out the purposes of P.L.1993, c.250 (C.45:9-22.12 et seq.). When the amount in the fund exceeds \$500,000, the excess money shall be transferred semiannually to the Casino Revenue Fund.

b. Within one year after the effective date of this act and annually thereafter, the board shall report to the Legislature on the amount collected and the use of the fund.

C.45:9-22.18 Rules, regulations.

7. Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the State Board of Medical Examiners shall adopt rules and regulations necessary to carry out the purposes of sections 5 and 6 of this act.

8. This act shall take effect 60 days after enactment.

Approved August 11, 1993.

CHAPTER 251

AN ACT concerning the assessment and taxation of agricultural facilities serving special or single use purposes in a farm operation and amending P.L.1964, c.48.

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

1. Section 12 of P.L.1964, c.48 (C.54:4-23.12) is amended to read as follows:

C.54:4-23.12 Structures valued, assessed and taxed; "single-use agricultural or horticultural facility" defined.

12. All structures, which are located on land in agricultural or horticultural use and the farmhouse and the land on which the farmhouse is located, together with the additional land used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other land in the taxing district; provided, however, that the term "structures" shall not include "single-use agricultural or horticultural facilities." As used in this act, "single-use agricultural or horticultural facility" means property employed in farming operations and commonly used for either storage or growing, which is designed or constructed so as to be readily dismantled and is of a type which can be marketed or sold separately from the farmland and buildings and shall include, but not be limited to, temporary demountable plastic covered framework made up of portable parts with no permanent understructures or related apparatus, commonly known as seed starting plastic greenhouses, or other readily dismantled silos, greenhouses, grain bins, manure handling equipment, and impoundments, but shall not include a structure that encloses a space within its walls used for housing, shelter, or working, office or sales space, whether or not removable.

2. This act shall take effect immediately.

Approved August 12, 1993.

CHAPTER 252

AN ACT concerning recorded telephone messages and supplementing chapter 17 of Title 48.

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

C.48:17-27 Definitions.

1. As used in this act:

“Caller” means a person who attempts to contact or contacts a subscriber in this State by telephone or using a telephone line.

“Subscriber” means a person who has subscribed to telephone service from a telephone company regulated as a public utility under Title 48 of the Revised Statutes or from a company offering mobile telephone service.

C.48:17-28 Delivery of certain recorded telephone messages prohibited.

2. A caller shall not use a telephone or telephone line to contact a subscriber to deliver a recorded message for the purpose of delivering commercial advertisement to the subscriber, unless the recorded message is introduced by an operator who shall obtain the subscriber’s consent before playing the recorded message, or unless a prior or current business relationship exists between the caller and the subscriber.

C.48:17-29 Use of certain devices; violation.

3. The use of automated dialing, push button, or tone activated devices which operate sequentially or are otherwise unable to avoid contacting subscribers who have not consented to the playing of the recorded message as provided in section 2 of this act is prima facie evidence of an intention to violate this act.

C.48:17-30 Exceptions.

4. Nothing in this act shall prohibit the use of automatic dialing equipment or the delivery of a recorded message for the purpose of advising customers concerning merchandise or goods or services previously ordered or purchased, including the collection of lawful debts or prohibit a telephone company from providing a service that is utilized for relaying messages for private purposes, such as a message delivery service.

C.48:17-31 Violations, penalties.

5. A person who violates the provisions of this act shall be subject to a penalty of not less than \$300 or more than \$800. Every superior court and municipal court shall have jurisdiction of proceedings for the collection and enforcement of a penalty imposed because of the violation, within the territorial jurisdiction of the court, of any provision of this act. The penalty shall be collected and enforced in a summary proceeding pursuant to the

“penalty enforcement law” (N.J.S.2A:58-1 et seq.). Process may be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the Attorney General or any other person.

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

Approved August 13, 1993.

CHAPTER 253

AN ACT concerning investments of funds of certain State regulated financial institutions and amending P.L.1947, c.308 and N.J.S.17B:20-1.

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

1. Section 1 of P.L.1947, c.308 (C.17:2-9.3) is amended to read as follows:

C.17:2-9.3 Legal investments in international banks.

1. The following may, in addition to other investments allowed by law, properly and legally invest any funds, including capital, belonging to them or within their control in obligations issued or guaranteed by the International Bank for Reconstruction and Development, or the International Finance Corporation, or by the Inter-American Development Bank or the Asian Development Bank or the African Development Bank; that is to say:

(a) Insurance companies, insurance associations, and all other persons carrying on an insurance business.

(b) Executors, administrators, guardians, committees, conservators, liquidators, rehabilitators, receivers, trustees, and all other persons occupying similar fiduciary positions.

(c) Banks, trust companies, bankers and savings banks.

(d) Savings and loan, and building and loan associations, investment companies, and other financial institutions.

(e) Credit unions, cemetery associations, mutual benevolent and benefit associations.

(f) Firemen's, police, and teachers' association pension and relief funds.

(g) Other pension, retirement, compensation, and sinking fund systems.

(h) The State and its counties, and municipalities and their subdivisions and agencies.

(i) All public officers, officials, boards, commissions, bodies and agencies of the State and its counties, and municipalities and their subdivisions and agencies.

(j) Any other individual, firm, group, corporation, association, institution, and fund of any nature whatsoever.

In the case of investments in obligations issued or guaranteed by the African Development Bank, no funds shall be used in or shall go to South Africa.

2. N.J.S.17B:20-1 is amended to read as follows:

Investments of domestic insurers.

17B:20-1. Any domestic insurer may invest its capital, surplus and other funds, or any part thereof, in:

a. Bonds, notes, or other evidences of indebtedness or public stock issued, created, insured or guaranteed by the United States, any territory or possession thereof, this or any other state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Canada, or any of the provinces thereof, or any instrumentality, agency or political subdivision of one or more of the foregoing.

b. Real estate which may be improved or which is unimproved but acquired in accordance with a definite plan for development within not more than five years, and in the improvement, development, operation or leasing thereof; provided, that if the commissioner shall determine that the interest of such insurer's policyholders requires that any specific real estate so acquired be disposed of, then such insurer shall dispose of such real estate within such reasonable time as the commissioner shall direct; and provided further, that the sum of (1) the aggregate amount invested in such real estate (including real estate held pursuant to N.J.S.17B:18-45 of this title) and (2) the aggregate amount invested in capital stock of any subsidiary of the insurer pursuant to N.J.S.17B:20-4, engaged in a business primarily involving the owning, improving, developing, operating or leasing of real estate, shall not exceed 10% of the total admitted assets of such insurer as of December 31 next preceding. Real estate used pri-

marily for agricultural, horticultural, ranching, mining, forestry or recreational purposes shall be deemed improved within the meaning of this subsection b. The term "real estate" as used in this chapter shall include any real property and any interest therein, including, without limitation, any interest on, above or below the surface of the land, any leasehold estate therein, and any such interest held or to be held by the insurer in cotenancy with one or more other persons and any partnership interest held by the insurer in any general or limited partnership engaged in a business primarily involving the owning, improving, developing, operating or leasing of real estate. Income produced by investment in any such leasehold shall be applied in a manner calculated to amortize the amount invested in such leasehold within a period not exceeding eight-tenths of the unexpired term of the leasehold, inclusive of enforceable options, or within 40 years, whichever is the lesser, or where the peculiar nature of the leasehold involved so dictates, within such period and subject to such other reasonable limitations as the commissioner shall by regulation impose. For the purposes of this subsection b., a mortgage loan shall not be deemed to be an investment in real estate, notwithstanding the mortgagor is an institution in which such insurer has an ownership interest as shareholder, partner, or otherwise. The commissioner may promulgate a regulation in connection with investments under this subsection b. which shall, as far as practicable, be consistent with those regulations of the department which treat with securities supported by such interests in real estate.

c. Mortgage loans on unencumbered real estate, located within the United States, any territory or possession thereof, the Commonwealth of Puerto Rico or Canada. The amount of any such loan shall not exceed 80% of the value of the real estate mortgaged unless (1) the loan is also secured by the mortgagor's interest in a lease or leases whose aggregate rentals shall be sufficient, after payment of operating expenses and fixed charges, to repay 90% of the loan with interest thereon during the initial term or terms of such lease or leases and shall be payable directly or indirectly by any governmental units, instrumentalities, agencies or political subdivisions or an institution or institutions which meet the credit standards of the insurer for an unsecured loan to such institution or institutions or (2) the loan is secured by a purchase money mortgage or like security received by the insurer upon the sale or exchange of real estate acquired pursuant to any provision of this title or (3) the excess over such 80% is insured

or guaranteed or to be insured or guaranteed by the United States, any territory or possession thereof, this or any other state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Canada or any of the provinces thereof, or any instrumentality, agency or political subdivision of one or more of the foregoing. Any mortgage loan so insured or guaranteed or to be insured or guaranteed shall not be subject to the provisions of any law of this State prescribing or limiting the interest which may be charged or taken upon any such loan.

Any such insurer may hold a participation in any such mortgage loan if (1) such participation is senior and gives the holder substantially the rights of a first mortgagee or (2) the interest of such insurer in the evidence or evidences of indebtedness is of equal priority, to the extent of such interest, with other interests therein.

Any such mortgage loan which exceeds two-thirds of the value of the real estate mortgaged shall provide for such payments of principal, whatever the period of the loan, that at no time during the period of the loan shall the aggregate payments of principal theretofore required to be made under the terms of the loan be less than would have been necessary to reduce the loan to two-thirds of such value by the end of 35 years through payments of interest only for five years and equal payments applicable first to interest and then to principal at the end of each year thereafter. The commissioner may promulgate such supplemental regulations as he deems necessary with regard to particular classes of such investments, taking into consideration the type of security and the ratio of the loan to the value of the real estate mortgaged. No loan may be made on leasehold real estate unless the terms of such loan provide for payments to be made by the borrower on the principal thereof in amounts sufficient to completely repay the loan within a period not exceeding nine-tenths of the term of the leasehold, inclusive of the term or terms which may be provided by any enforceable option or options of extension or of renewal, which is unexpired at the time the loan is made.

Real estate shall not be deemed to be encumbered within the meaning of this subsection c. by reason of the existence of taxes or assessments that are not delinquent, or encumbrances that do not adversely affect the salability of the property to a material extent or as to which the insurer is insured against loss by title insurance, or any prior mortgage or mortgages held by such insurer if the aggregate of the mortgages held shall not exceed the amount hereinbefore set forth, nor when such real estate is sub-

ject to lease in whole or in part; provided, that the security created by the mortgage on such real estate is a first lien thereon. Real estate shall not be deemed to be encumbered and the security of the mortgage thereon shall be deemed a first lien within the meaning of this subsection c., notwithstanding the mortgagor is an institution in which such insurer has an ownership interest as shareholder, partner or otherwise.

No such insurer shall, pursuant to this subsection c., invest more than 2% of its total admitted assets as of December 31 next preceding in any mortgage loan secured by any one property, nor shall its total mortgage investments pursuant to this subsection c., exclusive of any mortgage loans secured by a purchase money mortgage or like security received by the insurer upon the sale or exchange of real estate acquired pursuant to any provision of this title or insured or guaranteed or to be insured or guaranteed as hereinbefore provided, exceed 60% of such admitted assets.

d. Tangible personal property, equipment trust obligations or other instruments evidencing an ownership interest or other interest in tangible personal property where there is a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such personal property, provided, that the aggregate of such payments, together with the estimated salvage value of such property at the end of its minimum useful life and the estimated tax benefits to the insurer resulting from ownership of such property, is adequate to return the cost of the investment in such property, and provided further, that the aggregate net investments therein shall not exceed 10% of the total admitted assets of such insurer as of December 31 next preceding; or certificates of receivers of any institution where such purchase is necessary to protect an investment in the securities of such institution theretofore made under authority of this chapter; or the capital stock, beneficial shares or other instruments evidencing an ownership interest, bonds, securities or evidences of indebtedness issued, assumed or guaranteed by any institution created or existing under the laws of the United States, any territory or possession thereof, this or any other state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Canada or any of the provinces thereof; provided, that no purchase of any evidence of indebtedness which is in default as to interest shall be made by such insurer unless such purchase is necessary to protect an investment theretofore made under statutory authority.

The term "institution" as used in this chapter shall include any corporation, joint stock association, business trust, business joint venture, business partnership, savings and loan association, credit union or other mutual savings institution. No purchase shall be made of the stock of any class of any corporation, except a subsidiary of the insurer pursuant to N.J.S.17B:20-4, unless (1) such corporation has paid cash dividends on such class of stock during each of the past five years preceding the time of purchase or (2) such corporation shall have earned during the period of such five years an aggregate sum available for dividends upon such stock which would have been sufficient, after all fixed charges and obligations, to pay dividends upon all shares of such class of stock outstanding during such period averaging 4% per annum computed upon the par value (or in the case of stock having no par value, upon the stated capital in respect thereof) of such stock. In the case of the stock of a corporation resulting from or formed by merger, consolidation, acquisition or otherwise less than five years prior to such purchase, each consecutive year next preceding the effective date of such merger, consolidation or acquisition during which dividends or other distributions of profits shall have been paid by any one or more of its constituent or predecessor institutions shall be deemed a year during which dividends have been paid on such class of stock and the earnings of such constituent or predecessor institutions available for dividends during each of such years may be included as earnings of the existing corporation whose stock is to be purchased for each of such years; provided, however, that nothing herein contained shall prohibit the purchase of stock of any class which is preferred, as to dividends, over any class the purchase of which is not prohibited by this section; and provided further, that no purchase of its own stock shall be made by any insurer except for the purpose of the retirement of such stock or except as specifically permitted by any law of this State applicable by its terms only to insurers.

e. Securities, properties and other investments in foreign countries, in addition to those specified in N.J.S.17B:20-5, which are substantially of the same character as prescribed for authorized investments for funds of the insurer under the preceding subsections of this section, to an amount valued at cost, not exceeding in the aggregate at any one time 5% of the total admitted assets of such insurer as of December 31 next preceding; provided, however, that the amount invested pursuant to this subsection e. in authorized investments, other than qualified foreign investments, shall

not exceed in the aggregate, at any one time, 2% of such admitted assets; and provided further that the amount invested in authorized investments in any one foreign country pursuant to this subsection e. shall not exceed in the aggregate, at any one time, 2% of such admitted assets. For the purposes of this subsection e., Canada shall not be deemed to be a foreign country.

The term "qualified foreign investment" as used in this subsection e. shall include any investment in a foreign country where: (1) the issuer or obligor is (a) a jurisdiction which is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency, (b) any political subdivision or other governmental unit of any such jurisdiction, or any agency or instrumentality of any such jurisdiction, political subdivision or other governmental unit, or (c) an institution which is organized under the laws of any such jurisdiction, or, in the case of investments which are substantially of the same character as prescribed for investments under subsections b. and c. of this section, the real property is located in any such jurisdiction; and (2) if the investment is denominated in any currency other than United States dollars, the investment is effectively hedged, substantially in its entirety, against the United States dollar pursuant to contracts or agreements which are (a) issued by or traded on a securities exchange or board of trade regulated under the laws of the United States or Canada or a province thereof, (b) entered into with a United States banking institution which has assets in excess of \$5,000,000,000 and which has obligations outstanding, or has a parent corporation which has obligations outstanding, which are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency, or with a broker-dealer registered with the Securities and Exchange Commission which has net capital in excess of \$250,000,000, or (c) entered into with any other banking institution which has assets in excess of \$5,000,000,000 and which has obligations outstanding, or has a parent corporation which has obligations outstanding, which are rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency and which is organized under the laws of a jurisdiction which is rated in one of the two highest rating categories by an independent, nationally recognized United States rating agency.

Any investment qualified pursuant to paragraph (2) of the preceding definition of "qualified foreign investment" shall remain so qualified only at such time or times that the hedging requirements of paragraph (2) are met.

f. Bonds, notes, or other evidences of indebtedness, issued, insured or guaranteed or to be insured or guaranteed by the International Bank for Reconstruction and Development, or by the International Finance Corporation, or by the Inter-American Development Bank, or by the Asian Development Bank, or by the African Development Bank, except that no funds invested in obligations issued, insured or guaranteed by the African Development Bank shall be used in or shall go to South Africa.

g. Collateral loans secured by a pledge of capital stock, beneficial shares or other instruments evidencing an ownership interest, bonds, securities or evidences of indebtedness qualified or permitted for investment under any of the preceding subsections of this section. The amount of any such loan shall not exceed 80% of the market value of the security pledged at the date of the loan.

h. Loans or investments which are not qualified or permitted under any of the preceding subsections of this section or which are not otherwise expressly authorized by law; provided, that the aggregate amount of such loans and investments, valued at cost, shall not exceed at any one time 7% of the total admitted assets of such insurer as of December 31 next preceding.

For the purposes of subsection c. and this subsection h., the portion of a mortgage loan on unencumbered real estate which does not exceed 80% of the value of the real estate mortgaged shall be deemed to be a permitted investment under subsection c. and the remainder of said loan may be deemed to be made under this subsection h. Any investment originally made under this subsection h. which would subsequently, if it were being made, qualify as a permitted investment under another subsection of this section shall thenceforth be deemed to be a permitted investment under such other subsection.

3. This act shall take effect immediately.

Approved August 13, 1993.

CHAPTER 254

AN ACT authorizing the borough of South Belmar in the county of Monmouth to make permanent the appointment of Luigi Menditto to the police department of the borough of South Belmar.

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

1. Pursuant to the provisions of P.L.1948, c.199 (C.1:6-10 et seq.), under which a petition for a special law has been filed with the Legislature, the borough of South Belmar in the county of Monmouth is authorized to make permanent the appointment of Luigi Menditto as a full-time police officer, notwithstanding that his age is greater than the maximum age for appointment thereto set forth in N.J.S.40A:14-127. This appointment shall be subject to a qualifying examination but shall not be subject to a competitive examination.

2. The Board of Trustees of the Police and Firemen's Retirement System of New Jersey shall accept as a member of the retirement system any person otherwise eligible for membership, appointed pursuant to this act; provided there is paid into the retirement system, in a manner which the board shall prescribe, the contribution deemed due and payable from the date of original appointment.

3. This act shall take effect upon due adoption of an ordinance of the borough of South Belmar for the purpose of adopting same.

Approved August 13, 1993.

CHAPTER 255

AN ACT concerning limited purpose regional school districts and revising various parts of the statutory law.

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

1. Section 1 of P.L.1975, c.360 (C.18A:13-51) is amended to read as follows:

C.18A:13-51 Investigation as to advisability of withdrawal, dissolution; application; procedures.

1. The board of education of any local school district constituting part of a limited purpose regional school district or the governing body of the municipality constituting a constituent dis-

trict may, by resolution, apply to the county superintendent of schools to make an investigation as to the advisability of withdrawal of such local district from the regional district.

A majority of the boards of education of the school districts which constitute a limited purpose regional school district and a majority of the governing bodies of the municipalities which constitute the constituent school districts of a limited purpose regional school district may, by separate resolutions, apply to the county superintendent of schools to make an investigation as to the advisability of the dissolution of the regional district.

Within 21 days following adoption of the resolution or resolutions required pursuant to this section, the county superintendent shall call a meeting of representatives of each constituent governing body, each board of education constituting part of the regional district, and the board of education of the regional district to review the procedures to be followed for the withdrawal from, or dissolution of, the limited purpose regional district. This meeting, however, may be called by the county superintendent prior to the adoption of the required resolutions.

2. Section 2 of P.L.1975, c.360 (C.18A:13-52) is amended to read as follows:

C.18A:13-52 Report; feasibility study.

2. The county superintendent shall, within 60 days after such request, file with the governing bodies of the municipalities constituting the regional district and the boards of education of all of the constituent school districts and the board of education of the regional school district a report containing a statement of the current assets and operating expenses of the regional district for the then current year and such financial, educational and other information as he may deem necessary to enable said governing bodies and local boards of education and regional board of education to form an intelligent judgment as to the advisability of the proposed withdrawal or dissolution and the effect thereof upon the educational and financial condition of the withdrawing district and the regional district, or upon each of the constituent districts in the event of a dissolution, and setting forth the amount of indebtedness, if any, to be assumed by the withdrawing and the regional districts, or by each constituent district in the event of a dissolution, calculated as hereinafter provided.

The county superintendent may require the constituent municipalities and school districts and the regional district to submit a

feasibility study in order to determine the educational and financial impact of the withdrawal from, or dissolution of, the limited purpose regional district. In the event the county superintendent requests a feasibility study to be conducted, the county superintendent's report required pursuant to this section shall be filed within 60 days following submission of the feasibility study.

3. Section 3 of P.L.1975, c.360 (C.18A:13-53) is amended to read as follows:

C.18A:13-53 Calculation of amount of indebtedness to be assumed.

3. The county superintendent shall calculate the amount of indebtedness relating to buildings, grounds, furnishings, equipment and additions thereto so to be assumed on the basis of the proportion which the replacement cost of the buildings, grounds, furnishings, equipment, and additions thereto of the regional district situated in the withdrawing district, or in each of the constituent districts in the event of a dissolution, bears to the replacement cost of the buildings, grounds, furnishings, equipment and additions thereto situated in the entire regional district. Said replacement cost shall be determined according to rules prescribed by the commissioner with the approval of the State board and in accordance with recognized accounting practices. The county superintendent shall also calculate the amount of all other indebtedness and unfunded liabilities to be so assumed on an equitable basis.

4. Section 4 of P.L.1975, c.360 (C.18A:13-54) is amended to read as follows:

C.18A:13-54 Petition for permission to submit to voters for approval of withdrawal, dissolution; proof of service.

4. The municipal governing body or the board of education of the withdrawing district or the municipal governing body and the board of education of each constituent district seeking dissolution may, within 30 days after the filing of the report by the county superintendent, petition the commissioner for permission to submit to the legal voters of the withdrawing district and the remaining districts within the regional district the question whether or not it shall so withdraw or in the event of a dissolution to submit to the legal voters of each constituent district whether the regional district shall dissolve. The board may request in the petition any specific reduction or increase in the amount of indebtedness to be assumed as set forth in the county superintendent's report. Proof of the service of a copy of the petition upon

the municipal governing body and the board of education of each constituent district, the board of education of the regional district, and the county superintendent, prior to the filing of the petition, shall accompany the petition.

5. Section 6 of P.L.1975, c.360 (C.18A:13-56) is amended to read as follows:

C.18A:13-56 Submission of petition and answers to board of review; findings and determination of board.

6. Within 15 days after the filing of the answers to the petition, the Commissioner of Education shall submit the petition and answers to a board of review consisting of the commissioner as chairman, a member of the State Board of Education to be appointed by the president thereof, the State Treasurer or his designee and the Director of the Division of Local Government Services in the Department of Community Affairs, for a determination as to whether or not the petition should be granted, and if so, the amount of indebtedness, if any, to be assumed by the remaining and the new district, or by each of the constituent districts in the event of a dissolution, upon approval of the legal voters pursuant to section 9 of P.L.1975, c.360 (C.18A:13-59) at a special school election. The board of review shall consider the effect of the proposed withdrawal or dissolution upon the educational and financial condition of the withdrawing and the remaining districts, or upon each of the constituent districts in the event of a dissolution, and shall schedule and hold a public hearing on the petition upon the application of any interested party. In considering the effect of the proposed withdrawal or dissolution upon the educational and financial condition of the withdrawing and remaining districts, or upon each of the constituent districts in the event of a dissolution, the board of review shall:

- a. Consent to the granting of the application; or
- b. Oppose the same because, if the same be granted--
 1. An excessive debt burden will be imposed upon the remaining districts, or the withdrawing district, or upon any of the constituent districts in the event of a dissolution;
 2. An efficient school system cannot be maintained in the remaining districts or the withdrawing district, or in any of the constituent districts in the event of a dissolution, without excessive costs;
 3. Insufficient pupils will be left in the remaining districts, or in any of the constituent districts in the event of a dissolution, to maintain a properly graded school system; or

4. Any other reason, which it may deem to be sufficient; or
c. Request that if the petition be granted, the amount of debt which the remaining districts, or any of the constituent districts in the event of a dissolution, would be required to assume, calculated as hereinbefore provided, be reduced for the reason that--

1. Such amount of indebtedness, together with all other indebtedness of the municipalities or school districts would be excessive;

2. The amount of expenditure for debt service which would be required would be so great that sufficient funds would not be available for current expenses without excessive taxation; or

3. Such amount of indebtedness is inequitable in relation to the value of the property to be acquired by the remaining districts, or by any of the constituent districts in the event of a dissolution, and would materially impair the credit of the municipalities or such districts and the ability to pay punctually the principal and interest of their debt and to supply such essential educational facilities and public improvements and services as might reasonably be anticipated would be required of them.

The board of review shall make its findings and determination, by the recorded vote of at least three of the four members of the board, within 60 days of the receipt of the petition and answers.

6. Section 7 of P.L.1975, c.360 (C.18A:13-57) is amended to read as follows:

C.18A:13-57 Fixing date of election.

7. If the application be granted, the county superintendent shall, after conferring with the boards of education of the constituent districts, fix a day and a time on said day for holding a special school election, at which time the question whether or not the withdrawing school district shall withdraw from the regional district or whether the regional district shall be dissolved, whichever shall be applicable, shall be submitted to the legal voters of the withdrawing district and to the legal voters within the remainder of the regional district or to the legal voters of each of the constituent districts in the event of a dissolution.

7. Section 8 of P.L.1975, c.360 (C.18A:13-58) is amended to read as follows:

C.18A:13-58 Statement of indebtedness to be assumed in notices and advertisements; conduct of election; certification of results.

8. The amount of indebtedness to be assumed by the withdrawing district or by each of the constituent districts in the event

of a dissolution and the effect of such indebtedness upon the borrowing margin of the municipality, the withdrawing district, the remaining districts, and the remaining municipalities within the regional district, or by each of the constituent districts and municipalities within the regional district in the event of a dissolution, shall be stated in the notices and advertisements of the special school election and in the ballots to be used therein, and said election shall be conducted and the results thereof determined in the manner prescribed by law for special school elections in type II districts. The result shall be certified within five days after the holding of the election to the county superintendent and to the boards of education of the withdrawing district, the regional district and the constituent districts within the regional district, or to the boards of education of each of the constituent districts in the event of a dissolution.

8. Section 9 of P.L.1975, c.360 (C.18A:13-59) is amended to read as follows:

C.18A:13-59 Effective date of withdrawal, dissolution; votes for adoption.

9. If the question is adopted at said elections, the withdrawal of the district or the dissolution of the regional district shall become effective upon a date to be determined by the Commissioner of Education. For withdrawal from a regional district, the question shall be deemed adopted if it receives an affirmative vote of a majority of the votes cast within the withdrawing constituent district and it receives an affirmative vote of a majority of the overall votes cast in the entire regional district. For dissolution of a regional district, the question shall be deemed adopted if it receives an affirmative vote in a majority of the individual constituent districts and it receives an affirmative vote of a majority of the overall votes cast in the entire regional district.

9. Section 10 of P.L.1975, c.360 (C.18A:13-60) is amended to read as follows:

C.18A:13-60 Continuance in office of board members until withdrawal, dissolution; reapportionment of vacancies.

10. The members of the board of education of the regional district shall continue in office until the withdrawal of the district or the dissolution of the regional district has become effective. When a withdrawal has taken effect, the terms of those members of the regional board who reside in the withdrawing district shall thereupon expire, and the vacancies so occurring shall be reappor-

tioned among the remaining districts and filled by appointment by the county superintendent to serve until the next annual school election of the regional district, at which time their successors shall be elected in accordance with such reapportionment.

10. Section 11 of P.L.1975, c.360 (C.18A:13-61) is amended to read as follows:

C.18A:13-61 Taking title to and control of grounds, buildings and furnishings by districts; assumption of indebtedness.

11. The withdrawing district and the remaining districts, or each constituent district in the event of a dissolution, shall take title to and control of all school grounds and buildings, and the furnishings and equipment therein, other than those which had been rotated or shared among the regional schools, situated in their respective districts on the effective date of withdrawal or dissolution as established by the commissioner. The county superintendent shall allot a fair proportion of the shared or rotated furnishings and equipment to the withdrawing district or to each of the constituent districts in the event of a dissolution.

Upon the assumption of title, each board shall also assume such amount of the indebtedness of the original regional school district as shall have been determined by the board of review. In the event of a withdrawal, the withdrawing district shall pay to the regional board of education, at least five days before it becomes due, the amount of the principal and interest of the assumed indebtedness; such principal and interest shall be paid by the regional board, together with such amount due on its assumed indebtedness, at and when it becomes due and payable. In the event of a dissolution, the county superintendent and board of review, in determining the amount of indebtedness to be assumed by each constituent district, shall give due regard to the value of school buildings and grounds being conveyed to the constituent district in which those buildings and grounds are located.

11. Section 12 of P.L.1975, c.360 (C.18A:13-62) is amended to read as follows:

C.18A:13-62 Division of assets and liabilities in event of withdrawal, dissolution.

12. The county superintendent in a written report filed by him at the end of the school year preceding that in which the withdrawal or dissolution becomes effective shall make a division of the assets and liabilities between the withdrawing district and the regional district, or among the constituent districts in the event of a dissolution, in the same manner as provided in N.J.S.18A:8-24.

12. Section 13 of P.L.1975, c.360 (C.18A:13-63) is amended to read as follows:

C.18A:13-63 Dissolution of limited purpose regional school district; withdrawal of local districts; separate local school district.

13. If in the event of a withdrawal from the regional district as a result of the foregoing procedures a limited purpose regional school district shall be left with only one constituent local school district, such regional school district shall be dissolved upon the effective date of the withdrawal of the other constituent school districts, and such remaining constituent municipality shall thenceforth be constituted a separate local school district and governed by the laws applicable thereto. If all of the local districts withdraw from the regional district, such regional district shall be dissolved upon the effective date of the last withdrawal, and its assets and liabilities shall devolve upon the respective withdrawing districts in accordance with the division made by the county superintendent as provided in section 12 hereof.

Upon the effective date of a dissolution of a regional district each constituent municipality shall thenceforth be constituted a separate local school district and be governed by the laws applicable thereto, and its assets and liabilities shall devolve upon the respective constituent districts in accordance with the division made by the county superintendent as provided in section 12 of P.L.1975, c.360 (C.18A:13-62).

13. Section 14 of P.L.1975, c.360 (C.18A:13-64) is amended to read as follows:

C.18A:13-64 Positions, rights and benefits of regional, constituent district employees continued.

14. All employees of the regional district shall continue in their respective positions in the withdrawing district, or in each of the constituent districts in the event of a dissolution, and all of their rights of tenure, seniority, pension, leave of absence and other similar benefits shall be recognized and preserved and any periods of prior employment in the regional district shall count toward the acquisition of tenure to the same extent as if all such employment had been under the withdrawing district or in any of the constituent districts in the event of a dissolution. In the event of a withdrawal, any tenured employee in a school located in the withdrawing district who desires to remain in the employ of the regional district, and whose seniority under existing tenure laws so permits, may apply for and shall be granted a transfer to a

position with the regional district for which he is certified which is vacant, held by a tenured employee with less seniority or by an employee without tenure; applications for such transfers shall be made within 45 days of the date of the special school election at which the withdrawal was approved.

14. The State Board of Education 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 act.

15. This act shall take effect immediately.

Approved August 13, 1993.

CHAPTER 256

AN ACT concerning prescription drug substitutions and amending P.L.1977, c.240.

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

1. Section 5 of P.L.1977, c.240 (C.24:6E-4) is amended to read as follows:

C.24:6E-4 Definitions.

5. As used in this act unless the context clearly indicates otherwise:

a. "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

b. "Brand name" means the proprietary name assigned to a drug by the manufacturer thereof.

c. "Established name" with respect to a drug or ingredient thereof, means (1) the applicable official name designated pursuant to the Federal Food, Drug and Cosmetic Act (Title 21, USC 301 et seq.), or (2) if there is no such official name and such drug or ingredient is recognized in an official compendium, then the official title thereof in such compendium, except that where a drug or ingredient is recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different

official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply, or (3) if neither (1) nor (2) is applicable, then the common or usual name, if any, of such drug or ingredient.

d. "Prescription" means an order for drugs or combinations or mixtures thereof, written or signed by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals, and includes orders for drugs or medicines or combinations or mixtures thereof transmitted to pharmacists through word of mouth, telephone, telegraph or other means of communication by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals.

e. "Council" means the Drug Utilization Review Council.

f. "Chemical equivalents" means those drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendial standards.

g. "Reference drug product" means the product which is adopted by the council as the standard for other chemically equivalent drugs in terms of testing for the therapeutic equivalence. In all cases, the reference drug product shall be a currently marketed drug which is the subject of a full (not abbreviated) new drug application approved by the Federal Food and Drug Administration.

h. "Therapeutic equivalents" means chemical equivalents which, when administered to the same individuals in the same dosage regimen, will provide essentially the same efficacy or toxicity as their respective reference drug products.

i. "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

j. "Bioequivalents" means chemical equivalents which, when administered to the same individuals in the same dosage regimen, will result in comparable bioavailability.

k. "Pharmaceutical equivalents" means those drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage form and that meet established standards.

l. "Interchangeable drug products" means pharmaceutical equivalents or bioequivalents that are determined to be therapeutic equivalents by the council.

m. "Present compendial standards" means the official standards for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia (USP) and the National Formulary (NF).

n. "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.

2. This act shall take effect immediately.

Approved August 13, 1993.

CHAPTER 257

AN ACT concerning the availability of certain air pollution registration information and amending P.L.1954, c.212.

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

1. Section 9 of P.L.1954, c.212 (C.26:2C-9) is amended to read as follows:

C.26:2C-9 Department's duties; fees.

9. The department shall control air pollution in accordance with the provisions of any applicable code, rule or regulation promulgated by the department and for this purpose shall have power to--

(a) Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of air pollution;

(b) Conduct and supervise Statewide programs of air pollution control education including the preparation and distribution of information relating to air pollution control;

(c) Require the registration of persons engaged in operations which may result in air pollution and the filing of reports by them containing information relating to location, size of outlet, height of outlet, rate and period of emission and composition of effluent,

and such other information as the department shall prescribe to be filed relative to air pollution, all in accordance with applicable codes, rules or regulations established by the department;

(d) Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of air pollution and ascertaining compliance or noncompliance with any code, rules and regulations of the department. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection, investigation or determination, shall be kept confidential and shall not be admissible in evidence in any court or in any other proceeding except before the department as herein defined. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing air pollution;

(e) Receive or initiate complaints of air pollution, hold hearings in connection with air pollution and institute legal proceedings for the prevention of air pollution and for the recovery of penalties, in accordance with this act;

(f) With the approval of the Governor, cooperate with, and receive money from, the federal government, the State government, or any county or municipal government or from private sources for the study and control of air pollution;

(g) The department may in accordance with a fee schedule adopted as a rule or regulation establish and charge fees for any of the services it performs, which fees shall be annual or periodic as the department shall determine. The fees charged by the department pursuant to this section shall not be less than \$10.00 nor more than \$500.00 based on criteria contained in the fee schedule.

2. This act shall take effect immediately.

Approved August 13, 1993.

CHAPTER 258

AN ACT concerning proprietary campground facilities, amending and supplementing P.L.1977, c.419 and amending P.L.1989, c.299.

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

C.45:22A-49 Definitions.

1. As used in sections 2 through 8 of this act:

“Agency” means the Division of Housing and Development in the Department of Community Affairs.

“Proprietary campground facility” means any real property designed and used for the purpose of camping and associated recreational uses under a condominium or cooperative form of ownership.

C.45:22A-50 Discharge of duties of association, corporation.

2. The association or corporation responsible for the administration of a proprietary campground facility shall discharge its duties in accordance with the application for registration, public offering statement and bylaws approved by the agency and with all applicable statutes, rules and ordinances.

C.45:22A-51 Compliance with lawful requirements; violations, penalties.

3. All unit owners and proprietary lessees in a proprietary campground facility shall comply with all lawful requirements set forth in the master deed or certificate of incorporation, bylaws and public offering statement of the condominium or cooperative and with all State, county and municipal laws, rules and ordinances applicable to the maintenance and operation of the proprietary campground facility. Every master deed or certificate of incorporation for a proprietary campground facility shall prohibit the use of the property for purposes of domicile or permanent residency, unless otherwise permitted by municipal ordinance. Any unit owner or proprietary lessee who, after receipt of notice to cease and desist from the association or corporation responsible for the administration of the facility, shall continue to violate, or allow any other person to violate, any lawful requirement set forth in the master deed or certificate of incorporation, bylaws or public offering statement, or any applicable law, rule or ordinance, in contravention of this section, shall be subject to eviction and termination of contractual rights in a summary proceeding in the Special Civil Part of the Law Division of the Superior Court.

C.45:22A-52 Adoption of minimum health and safety standards; inspection program.

4. The agency shall adopt, after consultation with the State Commissioner of Health and the Public Health Council and in accordance with the “Administrative Procedure Act,” P.L.1968,

c.410 (C.52:14B-1 et seq.), minimum health and safety standards for proprietary campground facilities. The agency shall inspect each proprietary campground facility annually in order to ensure compliance with these minimum health and safety standards and shall establish and charge fees sufficient to cover the costs of the inspection program.

C.45:22A-53 Noncompliance; penalties.

5. Any person, including any individual, corporation or association, who shall fail to comply with the requirements of this act shall be subject to the issuance by the agency of a cease and desist order under section 13 of P.L.1977, c.419 (C.45:22A-33), to injunctive relief and appointment of a receiver under section 15 of P.L.1977, c.419 (C.45:22A-35) and to civil penalties under section 18 of P.L.1977, c.419 (C.45:22A-38); provided, however, that the minimum penalty that may be assessed under this act shall be \$50 per violation.

C.45:22A-54 Application for hearing.

6. Any person aggrieved by any order issued by the agency under this act shall be entitled to a hearing before the Commissioner of Community Affairs pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The application for such hearing must be filed with the agency within 10 business days of the receipt by the applicant of notice of the order complained of.

C.45:22A-55 Enforcement of standards.

7. The agency may delegate authority to enforce the minimum health and safety standards established under section 4 of this act to municipal and county governments. Such enforcement shall be subject to the supervision and control of the agency and in accordance with such rules as it may establish. Nothing in this act shall be construed to preclude the right of any municipality, health agency or the Pinelands Commission in the Pinelands area to adopt and enforce ordinances or regulations more restrictive than this act or any rules promulgated hereunder.

C.45:22A-56 Agreements with school district.

8. Nothing in this act shall be construed as precluding any unit owner, proprietary lessee or other occupant in a proprietary campground facility, who does not have a residence in the school district in which the proprietary campground facility is located, from entering into a voluntary agreement with the school district, or with any other school district, on a tuition-paying basis and subject to acceptance of such terms and conditions as may be mutually agreed upon.

9. Section 4 of P.L.1977, c.419 (C.45:22A-24) is amended to read as follows:

C.45:22A-24 Administration of act.

4. This act shall be administered by the Division of Housing and Development in the State Department of Community Affairs, hereinafter referred to as the "agency."

10. Section 1 of P.L.1989, c.299 (C.40:67-23.2) is amended to read as follows:

C.40:67-23.2 Definitions.

1. For the purposes of this act:

a. "Condominium" means the form of real property ownership provided for under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.);

b. "Cooperative" means a housing corporation or association wherein the holder of a share or membership interest in the corporation or association is entitled to possess and occupy, for dwelling purposes, a house, apartment, or other unit of housing owned by the corporation or association, or to purchase a unit of housing constructed or erected by the corporation or association;

c. "Fee simple community" means a private community which consists of individually owned lots or units and provides for common or shared elements or interests in real property;

d. "Horizontal property regime" means the form of real property ownership provided for under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.);

e. "Qualified private community" means a residential condominium, cooperative, fee simple community, or horizontal property regime, the residents of which do not receive any tax abatement or tax exemption related to its construction, comprised of a community trust or other trust device, condominium association, homeowners' association, or council of coowners, wherein the cost of maintaining roads and streets and providing essential services is paid for by a not-for-profit entity consisting exclusively of unit owners within the community. No apartment building or garden apartment complex owned by an individual or entity that receives monthly rental payments from tenants who occupy the premises shall be considered a qualified private community. No "proprietary campground facility," as defined in section 1 of P.L.1993, c.258 (C.45:22A-49), shall be considered to be a qualified private community.

11. This act shall take effect immediately.

Approved August 16, 1993.

CHAPTER 259

AN ACT relating to the acquisition of certain railroad rights-of-way and amending P.L.1991, c.224.

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

1. Section 4 of P.L.1991, c.224 is amended to read as follows:

4. From the amount provided in this act for the acquisition and preservation of railroad rights-of-way, there may be allocated such amounts as the Commissioner of Transportation shall determine, with the approval of the Director of the Division of Budget and Accounting, and the Joint Budget Oversight Committee, or its successor committee, for personal services by contract or, in lieu thereof, by State employees for inspection, planning, engineering, design, research, construction, appraisals or any other cost related to railroad right-of-way preservation and acquisition, provided that those amounts so allocated do not exceed 8% of the amount provided in this act for the acquisition and preservation of railroad rights-of-way.

2. Section 5 of P.L.1991, c.224 is amended to read as follows:

5. Costs of preservation and acquisition of railroad rights-of-way authorized pursuant to the "New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-way Preservation Bond Act of 1989," P.L.1989, c.180, shall be paid from the fund established in section 14 thereof. The Director of the Division of Budget and Accounting, where appropriate and practicable, may charge the fund and credit to the General Fund or other expenditure source such sums as may have been expended from other State appropriations for direct or indirect costs related to the costs of the preservation and acquisition of the railroad rights-of-way set forth in section 1 of this act subject to the approval of the Joint Budget Oversight Committee or its successor committee, provided that those sums so charged do not exceed 8% of the amount provided in this act for the acquisition and preservation of railroad rights-of-way.

3. This act shall take effect immediately and shall be retroactive to July 26, 1991.

Approved August 16, 1993.

CHAPTER 260

AN ACT concerning certain licensed lenders and amending various parts of the statutory law.

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

1. R.S.17:10-5 is amended to read as follows:

Issuance of license.

17:10-5. (a) (Deleted by amendment, P.L.1993, c.260).

(b) Issuance of license. If the commissioner, upon the filing of the application and payment of the fees, finds that the financial responsibility, experience, character and general fitness of the applicant and members thereof if the applicant is a copartnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter and that the applicant has a net worth of at least \$100,000.00 and has available for the purpose of making loans under this chapter at the specified location liquid assets of at least \$100,000.00, except that an applicant who holds a license pursuant to this chapter on the effective date of this 1989 amendatory act shall not be required to have a net worth of at least \$100,000.00 and have available liquid assets of at least \$100,000.00 for the purpose of making loans under this chapter at the location specified in the application until five years after the effective date of this 1989 amendatory act, then he shall thereupon issue and deliver a license to the applicant to make loans in accordance with this chapter at the location specified in the application. The license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided.

If the commissioner shall not so find he shall not issue the license and he shall notify the applicant of the denial and return to the applicant the appointment for service of process and the sum paid by the applicant as a license fee, retaining the investigation and application fees to cover the costs of investigating and processing the application. The commissioner shall approve or deny every application for license hereunder within 180 days from the hearing, if any, but if there shall be no hearing then within 90 days after the 10-day limitation for filing objections has expired.

2. R.S.17:10-12 is amended to read as follows:

Records, reports.

17:10-12. The licensee shall keep and use in his business, in form satisfactory to the commissioner, such books, accounts, and records as will enable the commissioner to determine whether the licensee is complying with the provisions of this chapter and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve the books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein, but in the case of an open-end loan, the two-year period shall be measured from the date of each entry.

Each licensee shall annually on or before February first file a report with the commissioner giving such information as the commissioner requires concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee in this state. The report shall be made under oath or affirmation and shall be in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of the reports.

3. R.S.17:10-13 is amended to read as follows:

Restrictions upon licensee; contract provisions for payments in installments.

17:10-13. No licensee shall advertise, print, display, publish, distribute, telecast or broadcast, or permit to be advertised, printed, displayed, published, distributed, telecast or broadcast, any statement or representation which refers to the supervision by the State of the business licensed hereunder. No licensee or any other person shall knowingly in any such manner make or permit to be made any statement or representation with regard to the rates, terms, or conditions for making loans in the sum of \$15,000.00 or less, which is false, misleading, or deceptive.

No licensee shall make any loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned, or to be earned, nor shall any such assignment or order be taken by a licensee at any time in connection with any loan, or for the enforcement of repayment thereof, and any such assignment or order hereafter so taken or given to secure any loan made by any licensee under this chapter shall be void and of no effect.

No licensee shall take a lien upon real estate as security for any loan under the provisions of this chapter, except such lien as is created by law upon the recording of a judgment.

No licensee shall conduct the business of making loans under the provisions of this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner. If a licensee conducts the business of making loans under the provisions of this act in any office, room or place of business in which it conducts other business properly authorized by the commissioner, the limitations of R.S.17:10-14 shall not apply to the other business, but only to loans made and activities engaged in under the provisions of the "Consumer Loan Act," R.S.17:10-1 et seq.

No licensee shall transact such business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license.

No licensee which is a corporation shall publicly sell or offer for sale within this State any of its capital stock without the written approval of the commissioner first obtained.

Every loan contract, other than an open-end loan contract, shall provide for repayment of principal and interest combined in installments which shall be payable at approximately equal periodic intervals of time and which shall be so arranged that no installment is substantially greater in amount than any preceding installment, except that the repayment schedule may reduce or omit such installments when necessary because of the seasonal nature of the borrower's income.

4. R.S.17:10-14 is amended to read as follows:

Interest rate; increases, decreases; fees.

17:10-14. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, every licensee hereunder may loan any sum of money not exceeding \$15,000.00 repayable in installments, and may charge, contract for and receive thereon interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

A closed-end loan contract may provide for a variation in the rate of interest in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. No increase during the entire

loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. The lender shall not be obligated to decrease the interest rate more than 6% over the term of the loan, nor more than 3% per annum during any 12-month period. If a rate increase is applied to the loan, the lender shall also be obligated to adopt and implement uniform standards for decreasing the rate. If the contract provides for the possibility of an increase or decrease, or both, in the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the contract. No rate increase shall take effect during the first three years of the term of the loan, or thereafter, (a) unless at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (b) unless at least 365 days have elapsed without any increase in the rate. No increase during the entire loan shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. Where the loan contract so provides for an increase or decrease in the rate of interest, the provision of R.S.17:10-13 requiring that no installment be substantially greater in amount than any preceding installment shall not apply.

An open-end loan agreement may provide that the lender may at any time, or from time to time, change the terms of the agreement, including the terms governing the periodic interest rate, calculation of interest or the method of computing the required amount of periodic installment payments, provided however, that:

- a. the periodic interest rate shall not be changed more than once in each billing cycle;
- b. any change in the periodic interest rate shall correspond to the movement of a market interest rate index specified in the agreement which is readily verifiable by the borrower and beyond the control of the lender;
- c. a change in any term of the agreement including the periodic interest rate may be permitted to apply to any then-outstanding unpaid indebtedness in the borrower's account including any indebtedness which shall have arisen from advances obtained prior to the effective date of the change, provided that fact is clearly and conspicuously disclosed in the agreement;

d. if the agreement provides for the possibility of change in any term of the agreement including the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the written notice; and

e. no change in any term of the agreement or of the index specified in the agreement shall be effective unless: (1) at least 30 days prior to the effective date of the change, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the change and the indebtedness to which it applies and states that the incurrence by the borrower or another person authorized by him of any further indebtedness under the law to which the agreement relates on or after the effective date of the change specified in the notice shall constitute acceptance of the change; and (2) either the borrower agrees in writing to the change or the borrower or another person authorized by him incurs such further indebtedness on or after the effective date of the change stated in such notice, which indebtedness may include outstanding balances.

The lender shall notify each affected borrower of any change in the manner set forth in the closed-end and open-end agreement governing the plan and in compliance with the requirements of the federal Truth in Lending Act (15 U.S.C. §1601 et seq.) and regulations promulgated thereunder, as in effect from time to time, if applicable.

The interest and periodic payments for loans at these rates shall be computed from standard tables based on the actuarial or annuity method which conforms to the so-called "United States Rule of Partial Payments," which provides that interest shall be calculated whenever a payment is made and the payment shall be first applied to the payment of interest and if it exceeds the interest due, the balance is to be applied to diminish principal. If the payment is insufficient to pay the entire amount of interest the balance of interest due shall not be added to principal, so as to produce interest thereon.

No interest shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances. For the purpose of computing interest, all installment payments shall be applied on the date of receipt, and interest shall be charged for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

No licensee shall induce or permit any person nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time for the purpose of obtaining a higher rate of interest than would

otherwise be permitted by this section. This prohibition shall not apply to any loan made pursuant to any other law of this State.

In addition to the interest herein provided for no further or other charge, or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except (1) amounts for insurance obtained or provided by the licensee in accordance with the provisions of this chapter; (2) on actual sale of the security in foreclosure proceedings or upon the entry of judgment; and (3) a returned check fee not to exceed \$20 which the licensee may charge the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account. If any interest, consideration or charges in excess of those permitted by this chapter are charged, contracted for or received, except as the result of a good faith error, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever, and the borrower shall be entitled to recover from the lender any such sums paid or returned to the lender by the borrower on account of or in connection with the loan.

5. Section 6 of P.L.1979, c.493 (C.17:10-14.3) is amended to read as follows:

C.17:10-14.3 Term of loans.

6. a. No closed-end loan in an amount of \$1,000 or less shall be made for a greater period of time than 36 months and 15 days.

b. No closed-end loan in an amount in excess of \$1,000, but not exceeding \$2,500, shall be made for a greater period of time than 48 months and 15 days.

c. No closed-end loan in an amount in excess of \$2,500, but not exceeding \$5,000, shall be made for a greater period of time than 60 months and 15 days.

d. No closed-end loan in an amount in excess of \$5,000, but not exceeding \$10,000, shall be made for a greater period of time than 84 months and 15 days.

e. No closed-end loan in an amount in excess of \$10,000 shall be made for a greater period of time than 120 months and 15 days.

6. R.S.17:10-21 is amended to read as follows:

Violation a crime of the fourth degree; contract void.

17:10-21. A person, copartnership, association, or corporation and the several members, officers, directors, agents, and employ-

ees thereof, who shall violate or participate in the violation of any provision of R.S.17:10-2, 17:10-12, 17:10-13, 17:10-14, 17:10-15 or 17:10-20 or section 1 of P.L.1962, c.159 (C.17:10-14.1), section 1 of P.L.1983, c.348 (C.17:10-14.1a), sections 5 and 6 of P.L.1979, c.493 (C.17:10-14.2 and 17:10-14.3), shall be guilty of a crime of the fourth degree.

A contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges unless the act was the result of a good faith error, including a good faith error made as a result of a licensee's acting in conformity with a rule or regulation of the commissioner which is later held to be invalid or in violation of R.S. 17:10-1 et seq. by a judgment by a court of competent jurisdiction, and the licensee notifies the borrower of the error within 90 days after discovering it and makes adjustments in the account necessary to assure that the borrower will not be required to pay any interest, costs, or other charges which aggregate in excess of the charges permitted under R.S.17:10-1 et seq.

7. Section 20 of P.L.1987, c.230 (C.17:11A-44.8) is amended to read as follows:

C.17:11A-44.8 Open-end loans.

20. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, and subject to all applicable provisions of this act, a licensee shall have authority to make open-end loans under P.L.1970, c.205 (C.17:11A-34 et seq.) and also upon the same terms and conditions permitted to banks, savings banks, and savings and loan associations pursuant to State and federal laws and regulations promulgated thereunder, and may charge, contract for, and receive thereon, interest at an annual percentage rate agreed to by the licensee and the borrower.

8. Section 21 of P.L.1987, c.230 (C.17:11A-44.9) is amended to read as follows:

C.17:11A-44.9 Authority to collect fees.

21. Licensees shall have authority to collect fees for title examination, abstract of title, survey, title insurance, credit reports, appraisals, and recording fees when those fees are actually paid by the licensee to a third party for those services or purposes and

to include those fees in the amount of the loan principal. Licensees shall also have the authority to charge and collect a returned check fee in an amount not to exceed \$20 which the licensee may charge the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account. Licensees shall also have the authority to charge and collect a late charge in any amount as may be provided in the note or loan agreement, but no late charge shall exceed 5% of the amount of payment in default. Not more than one late charge shall be assessed on any one payment in arrears.

9. Section 12 of P.L.1970, c.205 (C.17:11A-45) is amended to read as follows:

C.17:11A-45 Licensee's responsibilities.

12. A secondary mortgage loan licensee shall:

a. (Deleted by amendment, P.L.1987, c.230.)

b. (Deleted by amendment, P.L.1987, c.230.)

c. (Deleted by amendment, P.L.1987, c.230.)

d. Maintain a net worth of \$150,000 at all times; except that licensees licensed prior to March 31, 1981 shall maintain a net worth of \$50,000, until five years from July 31, 1987, at which time the licensee shall be required to prove and maintain at all times a net worth of at least \$100,000, and except that licensees licensed prior to the effective date of P.L.1992, c.20, shall maintain the net worth required of them prior to that date until three years from the effective date of P.L.1992, c.20, at which time the licensee shall be required to prove and maintain at all times a net worth of at least \$150,000.

e. Maintain at his place of business in this State an original, true, xerographic or electronic copy of the following instruments, documents, accounts, books and records:

(1) Promissory note or loan agreement evidencing each borrower's secondary mortgage loan indebtedness.

(2) Mortgage, indenture or any other similar instrument or document which creates a lien on the real property which is taken as security for a secondary mortgage loan.

(3) Any insurance policies or certificates of insurance where such insurance is obtained in accordance with section 2 of P.L.1983, c.348 (C.17:11A-49.1).

(4) Closing statement for each secondary mortgage loan.

(5) Appraisal, survey, title examination, title insurance policy, abstract of title, credit report or search, where utilized.

(6) Individual ledger card or any other form of record which shows all installment payments made by the borrower and all other charges or credits to the borrower's account.

(7) Individual file in which the borrower's application for a loan and any correspondence, including collection letters, memorandums, notes or any other written information pertaining to the borrower's account, shall be kept.

(8) Accounts, books and records as shall be required by the commissioner in order to ascertain whether the licensee has been conducting his secondary mortgage loan business in full compliance with the provisions of this act.

All of the aforementioned instruments, documents, accounts, books and records shall be preserved and kept available for investigation or examination by the commissioner for at least two years after a secondary mortgage loan has been paid in full, but in the case of an open-end loan, the two-year period is measured from the date of each entry. The provisions of this section shall not apply to any instrument, document, account, book or record which is assigned, sold or transferred to another secondary mortgage loan licensee nor shall the two-year requirement apply to an instrument or document which must be returned to the borrower at the time a secondary mortgage loan is paid in full.

f. Annually, before February 1, file a report with the commissioner which shall set forth such information as the commissioner shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be in writing, under oath and on a form provided by the commissioner.

g. Be subject to an examination by the commissioner, not more than once in any 18 month period, unless the commissioner has reason to believe that the licensee is not complying with the provisions of P.L.1970, c.205 (C.17:11A-34 et seq.) or any rule or regulation promulgated thereunder, at which time the commissioner shall have free access, during regular business hours, to the licensee's place or places of business in this State and to all instruments, documents, accounts, books and records which pertain to the licensee's secondary mortgage loan business. The cost of any such examination shall be borne by the licensee.

h. In the event a borrower's application for a secondary mortgage loan is denied, notify the borrower, in writing, of said denial and, provided further, the name of any such borrower or a list of any such borrowers shall not be referred by the licensee, in any manner what-

soever, to any other lender, retail seller of personal property or services or to any other person, whether in this or any other state.

i. If a secondary mortgage loan is not consummated, return all documents executed by or belonging to the borrower.

j. Give to the borrower, without charge, a copy of every instrument, document or other writing the borrower signs.

k. Give to the borrower, without charge, written evidence of any insurance obtained in accordance with section 16 of P.L.1970, c.205 (C.17:11A-49).

l. Give to the borrower, without charge, at the time a closed-end loan is made, and at the time of the first advance on an open-end loan, a closing statement which itemizes the individual amounts disbursed to or on behalf of the borrower, including, but not limited to, the premium for insurance, if any, the total amount of the funds so disbursed, the amount of the interest charge, total amount of the loan, the amount, number and due date of the installment payments and the interest charge expressed as an annual percentage rate, as applicable.

m. When a payment is made in cash on an account of a secondary mortgage loan, give to the borrower, without charge, at the time such payment is actually received, a written receipt which shall show the name and address of the licensee, the name and address of the borrower, account number or other identification mark or symbol, date and amount paid.

n. With respect to closed-end loans, upon written request from the borrower, give or forward to the borrower, without charge, within five days from the date of receipt of such request, a written statement of the borrower's account which shall show the dates and amounts of all installment payments credited to the borrower's account, the dates, amounts and an explanation of all other charges or credits to the account and the unpaid balance thereof. A licensee shall not be required to furnish more than two such statements in any 12-month period.

o. When a closed-end loan is paid in full, or when an open-end loan is paid in full and the borrower has notified the licensee in writing to discontinue his account with the licensee:

(1) Refund or credit to the borrower, in accordance with regulations promulgated by the Commissioner of Insurance, any unearned portion of the premium for any insurance, if a premium for such insurance was disbursed on behalf of the borrower at the time the secondary mortgage loan was originally made.

(2) Stamp or write on the face of the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness "Paid in Full" or "Cancelled," the date paid and the name and address of the licensee and, within 45 days, return the promissory note or loan agreement to the borrower.

(3) Release any lien on real property and cancel the same of record pursuant to P.L.1975, c.137 (C.46:18-11.2 et seq.), and, at the time the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness is returned, deliver to the borrower such good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to vest the borrower with complete evidence of title, insofar as the applicable secondary mortgage loan is concerned, to the real property, except that the licensee may require the borrower to pay any charge imposed upon the licensee by a county recording officer to effect the cancellation or release.

p. No provision of P.L.1970, c.205 (C.17:11A-34 et seq.) shall be deemed to prohibit the licensee from engaging in other business activities with a borrower, provided that such activities are not made a condition of the extension of credit by the licensee and provided that the activity has been approved by the commissioner by regulation and such other business activity is conducted in conformity with the regulation. The commissioner may, upon notice and hearing, order a licensee to cease and desist from engaging in any activity which violates this section or any other section of P.L.1970, c.205 (C.17:11A-34 et seq.).

10. Section 13 of P.L.1970, c.205 (C.17:11A-46) is amended to read as follows:

C.17:11A-46 Prohibited actions.

13. A secondary mortgage loan licensee shall not:

a. Transact any business subject to the provisions of this act under any other name or at any other location except that designated in his license. For the purpose of this section, the transaction of business includes, but is not limited to, the signing of any instrument, document or any other form by the borrower, except that a borrower's application for a secondary mortgage loan need not be signed in the office of the licensee and that a secondary mortgage loan need not be closed at the office of a licensee provided that it is closed in New Jersey at the office of an attorney admitted to practice in this State. A licensee who

changes his name or place of business shall immediately notify the commissioner who shall issue a certificate to the licensee, which shall specify the licensee's new name or address.

b. Photocopy or otherwise reproduce his license.

c. Request that a borrower incorporate in connection with a secondary mortgage loan or aid or abet such a scheme.

d. Make a secondary mortgage loan which has been referred by a retail seller, who, in connection with such referral, has required the borrower to purchase personal property or services or has indicated that such purchase is necessary as a condition precedent for such loan.

e. Charge an application fee or make any other charge or accept an advance deposit prior to the time a secondary mortgage loan is closed.

f. Require or accept from a borrower any collateral or security for a secondary mortgage loan other than a mortgage, indenture or any other similar instrument or document which creates a lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.

g. Contract for, charge, receive or collect directly or indirectly, any of the following in connection with a secondary mortgage loan: a broker's or finder's fee; commission; expense; fine; penalty; premium, or any other thing of value other than the charges authorized by this act; except the expenses incurred on actual sale of the real property in foreclosure proceedings or upon the entry of judgment, which are otherwise authorized by law; provided, however, that:

(1) a licensee may require a borrower to pay a reasonable legal fee at the time of the execution of the secondary mortgage loan, provided any such legal fee shall represent a charge actually incurred in connection with said secondary mortgage loan and shall not be paid to a person except an attorney authorized to practice law in this State; provided, further, that such legal fee shall be evidenced by a statement from such attorney issued to the licensee; and

(2) a licensee may charge and receive no more than three discount points computed as a percentage of the amount of the loan and may add such discount points to the principal balance of the loan which discount points shall be fully earned when the loan is made and shall be included in the finance charge and disclosed to the borrower as required under the truth in lending provisions of the Consumer Credit Protection Act, 15 U.S.C. §1601 et seq. The annual percentage rate charged to the borrower, including the discount points, if any, disclosed under this paragraph (2), shall be

subject to N.J.S.2C:21-19. As used in this paragraph (2), "discount point" means one per cent of the amount of credit to be extended to the borrower.

h. Assign, sell or transfer a secondary mortgage loan to a person other than a banking institution as defined in section 1 of P.L.1948, c.67 (C.17:9A-1), association, as defined in section 5 of P.L.1963, c.144 (C.17:12B-5), or another secondary mortgage loan licensee, the Federal National Mortgage Association created pursuant to section 302 of the National Housing Act, 48 Stat. 1246 (12 U.S.C. §1717), the Federal Home Loan Mortgage Corporation created pursuant to section 303 of the "Federal Home Loan Mortgage Corporation Act," Pub.L. 91-351 (12 U.S.C. §1452), or other persons or entities as from time to time approved by the commissioner to facilitate and assure the steady flow of secondary mortgage funds into the State. Notwithstanding any other provisions of this act, such persons or entities need not be licensed under the act to purchase or accept such an assignment or transfer of a secondary mortgage loan.

i. Solicit secondary mortgage loan business through any other person by paying, directly or indirectly, for such business referred to the licensee by any such person, except that a licensee may solicit secondary mortgage loan business on behalf of another licensee or lender expressly authorized to make secondary mortgage loans in this State if (1) such solicitation results in no additional cost or expense to the borrower; and (2) the application and all advertising in connection therewith clearly disclose the identity of the person or entity which will be making the loan. If those conditions are met, a licensee may collect a fee or a commission from the lender as consideration for the solicitation.

j. (Deleted by amendment, P.L.1993, c.260).

k. Advertise, cause to be advertised or otherwise solicit whether orally, in writing, by telecast, by broadcast or in any other manner:

(1) That he is licensed by, or that his business is under the supervision of, the State of New Jersey or the Department of Banking, except that a licensee may advertise that he is "licensed pursuant to the 'Secondary Mortgage Loan Act'"; provided, however, that for the purpose of raising capital, no such advertisement shall be permitted if it is to be used in connection with a public solicitation for such funds.

(2) Any name, address or telephone number other than the licensee's own name, address and telephone number in this State, except as permitted in paragraph (3) of this subsection.

(3) The word "bank" or any term inferring that the licensee is or is associated with a bank provided, however, that nothing in this paragraph shall be deemed to prohibit a licensee which is owned by or affiliated with a banking institution, as defined pursuant to section 1 of P.L.1948, c.67 (C.17:9A-1), or a holding company which owns or controls a banking institution from using the name of the banking institution or the holding company in its advertising.

(4) The amount of the interest to be charged, unless such charge is also expressed as an annual percentage rate.

(5) Any statement or representation which is false, misleading or deceptive and, provided further, a written or other visual advertisement shall include the licensee's name, address and telephone number in this State and the phrase "Secondary Mortgage Loans" in 10-point bold type or larger.

(6) Any statement or representation that the licensee will provide "immediate approval" of a loan application or "immediate closing" of a loan or will afford unqualified access to credit.

1. Make or offer to make any secondary mortgage loan which would not be a prudent loan.

11. Section 23 of P.L.1987, c.230 (C.17:11A-59.2) is amended to read as follows:

C.17:11A-59.2 Unintentional error.

23. A licensee shall have no liability for unintentional error if within 90 days after discovering an error the licensee notifies the borrower of the error and makes adjustments in the account as necessary to assure that the borrower will not be required to pay any interest, costs, or other charges which aggregate in excess of the charges permitted under the "Secondary Mortgage Loan Act," P.L.1970, c.205 (C.17:11A-34 et seq.). The discovery of an unintentional error within the meaning of this section shall include an entry of a judgment by a court of competent jurisdiction holding that a rule or regulation with which the licensee acted in conformity was invalid or in violation of P.L.1970, c.205 (C.17:11A-34 et seq.) and a licensee shall have no liability for such unintentional error if the licensee takes the actions required upon discovery of an error pursuant to this section within the time stated herein following entry of such a judgment.

12. This act shall take effect immediately.

Approved August 16, 1993.

CHAPTER 261

AN ACT concerning certain powers of dental service corporations and supplementing P.L.1968, c.305 (C.17:48C-1 et seq.).

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

C.17:48C-4.1 Supplying administrative services by dental service corporation.

1. A dental service corporation may supply administrative services only.

2. This act shall take effect immediately.

Approved August 16, 1993.

CHAPTER 262

AN ACT appropriating \$15,500,000 from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, for farmland preservation, and approving certain farmland preservation projects as eligible for funding therefrom.

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

1. There is appropriated to the State Agriculture Development Committee from the "1989 Farmland Preservation Fund," established pursuant to section 22 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, the sum of \$14,000,000 for the purpose of: a. providing grants to counties and municipalities for up to 80% of the cost of acquisition of development easements on farmland, provided that any funds received for the transfer of a development easement shall be dedicated to the future purchase of development easements; and b. providing for up to 100% of the cost of acquisition of development easements under such emergency conditions as the State Agriculture Development Committee determines, for projects approved as eligible for such funding pursuant to section 2 of this act, section 1 of P.L.1993, c.263, or section 1 of P.L.1993, c.264.

2. The following projects are eligible for funding with the monies appropriated pursuant to section 1 of this act:

<u>PRO- JECT</u>	<u>COUNTY</u>	<u>TOWN- SHIP</u> (except as noted)	<u>BLOCK</u>	<u>LOTS</u>	<u>AMOUNT OF GRANT NOT TO EXCEED</u>
1	Warren	Washington	49	2	\$10,000
2	Morris	Washington	34	40	\$250,000
3	Warren	Franklin	56	33	\$250,000
4	Warren	Washington	71	2	\$250,000
5	Warren	Franklin	48	10	\$250,000
		Washington	70	5	
6	Hunterdon	Franklin	37	42	\$500,000
7	Hunterdon	Readington	64	44, 44.01, 44.02	\$500,000
8	Morris	Washington	34	35, 35A, 36	\$500,000
9	Warren	Franklin	51	2	\$500,000
			53	3	
10	Hunterdon	Delaware	33	11	\$750,000
			53	5, 6	
		Stockton Boro	2	p/o 9	
11	Hunterdon	Delaware	51	9	\$750,000
12	Hunterdon	East Amwell	30	5, 42, 41.01	\$750,000

3. There is appropriated to the State Agriculture Development Committee the sum of \$1,500,000 from the "1989 Farmland Preservation Fund," established pursuant to section 22 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, for the purpose of providing for costs, as defined in section 3 of P.L.1989, c.183, incurred implementing the provisions of the "Agriculture Retention and Development Act," P.L.1983, c.32 (C.4:1C-11 et al.).

4. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1989, c.183.

5. This act shall take effect immediately.

Approved August 20, 1993.

CHAPTER 263

AN ACT approving certain farmland preservation projects as eligible for funding, and appropriating \$4,000,000 for farmland preservation, from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183.

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

1. The following projects are eligible for funding with monies made available from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, and appropriated to the State Agriculture Development Committee pursuant to section 1 of P.L.1993, c.262:

<u>PRO- JECT</u>	<u>COUNTY</u>	<u>TOWN- SHIP</u> (except as noted)	<u>BLOCK</u>	<u>LOTS</u>	<u>AMOUNT OF GRANT NOT TO EXCEED</u>
1	Mercer	East Windsor	31	22	\$250,000
2	Monmouth	Upper Freehold	13	14, 15	\$250,000
3	Monmouth	Upper Freehold	12	5	\$250,000
4	Mercer	Hamilton	625	9, 26	\$500,000
			607	9	
			606	9	
5	Middlesex	S. Brunswick	1	1.062	\$500,000
6	Somerset	Franklin	33	2	\$500,000
7	Somerset	Hillsborough	173	14	\$500,000
8	Somerset	Hillsborough	144	17	\$500,000
9	Middlesex	Plainsboro	12	2, 5.05	\$750,000
10	Somerset	Hillsborough	173	10	\$750,000
11	Monmouth	Upper Freehold	42	2	\$1,000,000
			43	7	
12	Middlesex	Cranbury	23	11	\$1,250,000
13	Somerset	Montgomery	32001	2, 4, 4.01, 4.02, 4.03, 5, 5.02, 5.03, 6	\$2,000,000
			32002	20, 21, 22, 23	
			33001	21.01, 23	

2. There is appropriated to the State Agriculture Development Committee from the "1989 Farmland Preservation Fund," established pursuant to section 22 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, the sum of \$4,000,000 for the cost of acquisition of fee simple absolute titles to farmland, which shall be offered for resale with agricultural deed restrictions.

The following projects are eligible for funding with the monies appropriated pursuant to this section:

<u>PRO- JECT</u>	<u>COUNTY</u>	<u>TOWN- SHIP</u> (except as noted)	<u>BLOCK</u>	<u>LOTS</u>	<u>AMOUNT OF GRANT NOT TO EXCEED</u>
1	Cumberland	Hopewell	10	3, 4, 5, 6, 6.02	\$1,000,000

2	Hunterdon	Franklin	30	22, 22.01 22.02	\$1,250,000
3	Salem	Quinton	33 34	16 1	\$1,500,000
4	Warren	Washington	71	7 (part of)	\$1,750,000
5	Warren	Franklin	51 52	18, 5 4	\$3,250,000
6	Hunterdon	Readington	62	4, 7	\$3,500,000

3. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1989, c.183.

4. This act shall take effect immediately.

Approved August 20, 1993.

CHAPTER 264

AN ACT approving certain farmland preservation projects as eligible for funding, and appropriating \$103,000 for soil and water conservation projects, from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183.

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

1. The following projects are eligible for funding with monies made available from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, and appropriated to the State Agriculture Development Committee pursuant to section 1 of P.L.1993, c.262:

PRO- JECT	COUNTY	TOWN- SHIP (except as noted)	BLOCK	LOTS	AMOUNT OF GRANT NOT TO EXCEED
1	Salem	Pilesgrove	27	7	\$100,000
2	Burlington	North Hanover	301	3	\$250,000
3	Cape May	Middle	1	1.04	\$250,000
4	Cumberland	Hopewell	89 78 79	4, 5, 6 3.01 6	\$250,000
5	Cumberland	U. Deerfield	27	2, 2.01	\$250,000
6	Salem	L. Allwys. Crk	38 55 53 54	19, 20 5 16 12, 17	\$250,000

7	Salem	L. Allwys. Crk	9	6, 8, 10	\$250,000
			10	1, 5	
8	Salem	Quinton	17	1, 2	\$250,000
			3	30, 32, 33	
			2	13.01	
9	Burlington	North Hanover	604	5	\$500,000
			700	1, 3	
10	Gloucester	South Harrison	17	5	\$500,000
			16	1YA, 1YB	
			9	14, 16YA	
				16YB	
		Woolwich	42	3	
11	Ocean	Plumsted	43	1	\$500,000
12	Salem	Pilesgrove	43	7	\$500,000
13	Ocean	Plumsted	83	1	\$750,000
			75	4, 5	

2. There is appropriated to the State Agriculture Development Committee from the "1989 Farmland Preservation Fund," established pursuant to section 22 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, the sum of \$103,000 for the purpose of providing grants to landowners for up to 50% of the cost of soil and water conservation projects.

The following projects are eligible for funding with the monies appropriated pursuant to this section:

<u>PRO- JECT</u>	<u>COUNTY</u>	<u>TOWN- SHIP (except as noted)</u>	<u>BLOCK</u>	<u>LOTS</u>	<u>AMOUNT OF GRANT NOT TO EXCEED</u>
1	Burlington	Shamong	34	13	\$2,000
2	Cumberland	Hopewell	88	9.02	\$3,000
3	Salem	Mannington	35	2	\$4,000
			36	7	
4	Burlington	Shamong	19.01	28.34	\$5,000
5	Warren	Liberty	1	29	\$7,000
		Independence	29	4	
6	Salem	Quinton	67	27, 27.02	\$8,000
			57	29	
7	Atlantic	Hammonton	1001	63	\$12,000
		Town	1102	5, 6	
8	Atlantic	Hammonton	1102	1	\$12,000
		Town			
9	Warren	Independence	29	27	\$24,000
10	Cumberland	Fairfield	45	7.02	\$26,000
			48	7.01, 7.02	

3. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1989, c.183.

4. This act shall take effect immediately.

Approved August 20, 1993.

CHAPTER 265

AN ACT concerning the structure and function of the Department of Agriculture, amending R.S.4:1-6, and supplementing Title 4 of the Revised Statutes.

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

1. R.S.4:1-6 is amended to read as follows:

Agricultural convention delegates.

4:1-6. Each county board of agriculture shall be entitled to be represented in the annual convention by two delegates.

Each of the following organizations shall be entitled to be represented in the annual convention by one delegate: American Cranberry Growers' Association, Board of Managers of the New Jersey Agricultural Experiment Station, Cook College of Rutgers, The State University, The Cooperative Marketing Associations in New Jersey, Inc., Cultivated Sod Association of New Jersey, Inc., Garden State Dairy Goat Association, Inc., Garden State Milk Council, Garden State Service Cooperative Association, Inc., Horse Park of New Jersey at Store Tavern Inc., Morgan Horse Association of New Jersey, New Jersey Angus Association, Inc., New Jersey Agricultural Society, Inc., New Jersey Apple Institute, Inc., New Jersey Association of Agricultural Fairs, New Jersey Beekeepers' Association, Inc., New Jersey Christmas Tree Growers' Association, New Jersey Commercial Fisherman's Association, New Jersey Farmers Direct Marketing Association, Inc., New Jersey Farm Bureau, Inc., New Jersey FFA Alumni Association, Grain and Forage Producers' Association of New Jersey, Inc., New Jersey Guernsey Breeders' Association, Inc., New Jersey Hereford Association, New Jersey Holstein-Friesian

Association, Inc., New Jersey Horse Council, New Jersey Livestock Cooperative Association, Inc., New Jersey Nursery and Landscape Association, New Jersey Nursery and Landscape Association -- Metropolitan Chapter, New Jersey Peach Council, New Jersey Peach Promotion Council, Inc., New Jersey Plant and Flower Growers Association, Inc., New Jersey Pony Breeders and Owners, Inc., New Jersey Quarter Horse Association, New Jersey Sheep and Wool Cooperative Association, Inc., New Jersey State Florists' Association, Inc., New Jersey State Grange, Patrons of Husbandry, Inc., New Jersey State Horticultural Society, Inc., New Jersey State Potato Association, Inc., New Jersey State Poultry Association, Inc., New Jersey State Sweet Potato Industry Association, Inc., New Jersey Turkey Association, New Jersey Veterinary Medical Association, New Jersey Vocational Agriculture Teachers Association, each Pomona Grange, Patrons of Husbandry, Standardbred Breeders and Owners Association of New Jersey, Inc., Thoroughbred Breeders' Association of New Jersey, Tru-Blu Cooperative Association, Inc., South Jersey Flower Growers Association, Inc., and the Vegetable Growers Association of New Jersey, Inc.

Prior to the time fixed for the holding of the annual convention each of the organizations named in this section shall choose from its members the authorized number of delegates and certify to the convention their qualifications as such. The credentials shall be filed with the proper convention officer or committee, and upon the acceptance thereof by the convention such persons shall have all the rights and powers of delegates.

C.4:1-22.2 Grants, awards for agricultural promotion.

2. The department may, within the limits of monies appropriated for such purposes, make grants, awards, loans, distributions and incentives to any person, including any political subdivision of the State, to promote, advance, foster, preserve and maintain agriculture in this State, on such terms and subject to such reasonable conditions and restrictions as shall be in the best interest of the State.

C.4:1-11.1 Rules, regulations.

3. The board may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) such rules and regulations as may be necessary to carry out the provisions of this Title.

4. This act shall take effect immediately.

Approved August 25, 1993.

CHAPTER 266

AN ACT reappropriating \$426,500 from the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, and \$2,695,500 from the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, to provide loans to assist local government units 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. There is reappropriated to the Department of Environmental Protection from the "1989 New Jersey Green Trust Fund" established pursuant to section 19 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, the sum of \$426,500, and from the "Green Trust Fund" established pursuant to section 22 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, the sum of \$2,695,500, to provide loans to assist local government units to develop lands for recreation and conservation purposes, which sums shall include administrative costs.

The following development projects are eligible for funding with the moneys reappropriated pursuant to this section:

<u>Local Government Unit</u>	<u>County</u>	<u>Project</u>	<u>Approved Amount</u>
Demarest Boro	Bergen	Wakelee Field 2 Dev.	\$66,000
Burlington Twp.	Burlington	Upper Sylvan Lake Dev.	\$150,000
Barrington Boro	Camden	Stoneybrook Park Dev.	\$150,000
Belmar Boro	Monmouth	Maclearie Park Dev.	\$500,000
Fair Haven Boro	Monmouth	Fair Haven Flds. Dev.	\$125,000
Highlands Boro	Monmouth	Veterans Park Dev.	\$500,000
Keyport Boro	Monmouth	Waterfront Park Dev.	\$180,000
Long Hill Twp.	Morris	Stirling Lk/ Turtle Rock Dev.	\$50,000
Beachwood Boro	Ocean	Boardwalk Rehab. Dev.	\$150,000
Little Egg Harbor Twp.	Ocean	Thomas Ave. Park Dev.	\$138,000
Manchester Twp.	Ocean	Holly Oaks Dev.	\$385,000
South Toms River Boro	Ocean	Mathis Plaza Dev.	\$368,000
Wanaque Boro	Passaic	Back Beach 2 Dev.	\$360,000

b. Any transfer of any funds or project sponsor, or change in project site, listed in subsection a. of this section or in subsection a. of section 1 of P.L.1993, c.200 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, the local government unit projects listed in P.L.1984, c.224, P.L.1985, c.479, P.L.1986, c.208, P.L.1988, c.23, P.L.1989, c.194, P.L.1991, c.13, P.L.1991, c.14, P.L.1991, c.15, P.L.1991, c.16, P.L.1991, c.522, section 1 of P.L.1993, c.200, section 1 of P.L.1993, c.267, and section 1 of P.L.1993, c.201 shall be eligible for funding, including administrative costs, in a sequence consistent with the priority system established by the Department of Environmental Protection, and shall require the approval of the Joint Budget Oversight Committee or its successor.

2. Pursuant to the provisions of subsection c. of section 9 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, and subsection c. of section 9 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, as appropriate, all loans made to local government units with moneys reappropriated pursuant to this act shall bear interest of not more than 2% per year and shall be for a term of not more than 20 years. All principal and interest payments repaid by the local government units shall be deposited into the respective "Green Trust Fund" from which the moneys were appropriated or reappropriated in accordance with the terms of a written loan agreement. The terms of the loan agreement shall be completed and executed on a form approved by the State Treasurer or his designee.

3. The expenditure of the sums reappropriated by this act is subject to the provisions and conditions of P.L.1989, c.183, and P.L.1987, c.265, as appropriate.

4. This act shall take effect immediately.

Approved August 26, 1993.

CHAPTER 267

AN ACT appropriating \$2,699,500 from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, and reappropriating \$2,699,500 from the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, to provide loans or grants, or both, to assist local government units to acquire and 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 "1992 New Jersey Green Trust Fund" established pursuant to section 22 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of \$2,699,500, and there is reappropriated to the department from the "Green Trust Fund" established pursuant to section 16 of the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, the sum of \$2,699,500, to provide loans or grants, or both, to assist local government units to acquire and develop lands for recreation and conservation purposes, which sums shall include administrative costs.

The following acquisition and development projects are eligible for funding with the moneys appropriated or reappropriated pursuant to this section:

Local Government Unit	County	Project	Approved Amount
Bergen County	Bergen	Belmont Park Dev.	\$176,000
Lodi Boro	Bergen	Memorial Park Dev.	\$980,000
Pemberton Twp.	Burlington	Community Park Acq.	\$450,000
Gloucester Twp.	Camden	Glen Oaks Rec. Complex Acq.	\$450,000
Winslow Twp.	Camden	Sicklerville Pk. Lighting Dev.	\$500,000
Monroe Twp.	Gloucester	Earling Owens Park 6 Dev.	\$75,000
Monroe Twp.	Gloucester	Earling Owens Park Acq.	\$380,000
Trenton City	Mercer	Sonny Vereen Park Dev.	\$294,000
Trenton City	Mercer	Hetzel Field Park Access Acq.	\$250,000
Trenton City	Mercer	D & R Canal Park Addition Acq.	\$100,000
Long Branch City	Monmouth	Jackson Woods Dev.	\$150,000
Long Branch City	Monmouth	Long Branch Open Space Acq.	\$964,000
Paterson City	Passaic	Park Program Phase 2 Dev.	\$630,000

b. Any transfer of any funds or project sponsor, or change in project site, listed in subsection a. of this section or in subsection a. of section 1 of P.L.1993, c.201 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, the local government unit projects listed in P.L.1984, c.224, P.L.1985, c.479, P.L.1986, c.208, P.L.1988, c.23, P.L.1989, c.194, P.L.1991, c.13, P.L.1991, c.14, P.L.1991, c.15, P.L.1991, c.16, P.L.1991, c.522, section 1 of P.L.1993, c.200, section 1 of

P.L.1993, c.266, and section 1 of P.L.1993, c.201, that involve local government units eligible to receive State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), shall be eligible for funding, including administrative costs, in a sequence consistent with the priority system established by the Department of Environmental Protection, and shall require the approval of the Joint Budget Oversight Committee or its successor.

2. Pursuant to the provisions of subsection c. of section 7 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, and subsection d. of section 4 of the "New Jersey Green Acres Bond Act of 1983," P.L.1983, c.354, as appropriate, all loans made to local government units with moneys appropriated or reappropriated pursuant to this act shall bear interest of not more than 2% per year and shall be for a term of not more than 20 years. All principal and interest payments repaid by the local government units shall be deposited into the respective "Green Trust Fund" from which the moneys were appropriated or reappropriated in accordance with the terms of a written loan agreement. The terms of the loan agreement shall be completed and executed on a form approved by the State Treasurer or his designee.

3. The expenditure of the sums appropriated or reappropriated by this act is subject to the provisions and conditions of P.L.1992, c.88, and P.L.1983, c.354, as appropriate.

4. This act shall take effect immediately.

Approved August 26, 1993.

CHAPTER 268

AN ACT creating the Youth Transitions to Work Partnership, making an appropriation, supplementing Title 34 of the Revised Statutes and amending P.L.1992, c.43.

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

C.34:15E-1 Short title.

1. This act shall be known and may be cited as the “Youth Transitions to Work Partnership Act.”

C.34:15E-2 Findings, declarations.

2. The Legislature finds and declares that:

a. To succeed in the face of intensely competitive conditions, the economy of New Jersey requires the creation of a growing pool of highly trained, technologically sophisticated young workers, which can be achieved, in part, by providing greater opportunities and incentives for youths who in the past have not sought college education or even completed high school;

b. The potential value of work-based, hands-on learning to create that growing pool has been demonstrated by the high quality of the training and education provided by existing registered apprenticeship programs;

c. The benefits of apprenticeship training in creating a highly-skilled workforce, however, are limited to less than 3% of the workforce of the United States or this State, compared to more than two thirds of German workers;

d. In this State, as well as in this nation, most participants do not enter apprenticeship programs until six or more years after their graduation from high school;

e. Education and training for careers in skilled trades are unattractive to many high school students and their parents, because workers in those trades are rarely provided with the opportunities for lifelong occupationally relevant learning and ongoing advancement that are commonplace in professional occupations;

f. The experience of German and Japanese schools and employers clearly demonstrates that all youth need a strong educational foundation in order to have the flexibility to succeed in the face of rapid economic change and that work-based learning is a necessary supplement to, but not a substitute for, high academic standards;

g. It is therefore an appropriate public purpose to establish a Youth Transitions to Work Partnership to establish new apprenticeship programs for high-wage, high-skill, labor demand occupations and link those new programs and existing apprenticeship programs with secondary schools and institutions of higher education to provide effective transitions for high school graduates into those programs, while sustaining or enhancing educational standards, and to create opportunities for lifelong occupationally relevant learning and ongoing career advancement

for front-line workers, thereby motivating youth to greater success in secondary and post-secondary education.

C.34:15E-3 Definitions.

3. As used in this act:

“Apprenticeship Policy Committee” or “committee” means the New Jersey Apprenticeship Policy Committee which:

a. Was established by a written agreement of: the Bureau of Apprenticeship and Training in the U.S. Department of Labor; the State Department of Labor; and the State Department of Education; and

b. Consists of: the Assistant Commissioner, State Department of Education, Division of Adult and Occupational Education; the Director of Region II of the Bureau of Apprenticeship and Training in the U.S. Department of Labor; an assistant commissioner of the State Department of Labor; and a representative of the New Jersey State AFL-CIO.

“Apprenticeship program” means a registered apprenticeship program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the bureau, or registered by a State apprenticeship agency recognized by the bureau.

“Labor demand occupation” means an occupation for which there is or is likely to be an excess of demand over supply for adequately trained workers, including, but not limited to, an occupation designated as a labor demand occupation by the New Jersey Occupational Information Coordinating Committee pursuant to section 12 of P.L.1992, c.43 (C.34:1A-78).

“Youth Transitions to Work Partnership” or “Partnership” means the Youth Transitions to Work Partnership established pursuant to section 4 of this act.

“Youth Transitions to Work Partnership Advisory Council” or “council” means the Youth Transitions to Work Partnership Advisory Council established pursuant to section 8 of this act.

C.34:15E-4 Youth Transitions to Work Partnership established; purpose.

4. a. The Youth Transitions to Work Partnership is hereby established in, but not of, the Department of Labor. Notwithstanding any appropriations that are made to the Youth Transitions to Work Partnership from the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13), the Youth Transitions to Work Partnership is separate from the Workforce

Development Partnership Program and not subject to the requirements of P.L.1992, c.43 (C.34:15D-1 et al.).

b. The purpose of the Youth Transitions to Work Partnership is to facilitate effective transitions by youths to high-skill, high-wage employment in labor demand occupations with long-term career potential and opportunities for occupationally relevant life-long learning, and thereby motivate youth to greater success in secondary and post-secondary education. To implement that purpose, the partnership shall provide consortia of businesses, business organizations, labor organizations and educational institutions with:

(1) Grants pursuant to section 5 of this act for the establishment of new apprenticeship programs in occupations or industries which do not currently have apprenticeship programs in this State; and

(2) Grants pursuant to sections 6 and 7 of this act to establish new programs to link education and higher education to either existing apprenticeship programs or new apprenticeship programs established pursuant to section 5 of this act.

c. All training, education or other services provided pursuant to this act shall be for careers in occupations which are labor demand occupations and have an average level of pay in the State which exceeds the average level of pay for all workers in the State.

d. Funds available in connection with the partnership shall not be used for activities which:

(1) Induce, encourage or assist: any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers; any replacement of laid off workers by trainees; or any relocation of operations resulting in a loss of employment at a previous workplace;

(2) Replace, supplant, compete with or duplicate in any way existing approved apprenticeship programs; or

(3) Impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

e. Any business which has an individual working for it under a program established under a grant provided by the partnership shall be responsible for providing workers' compensation coverage for the individual.

C.34:15E-5 Grant eligibility.

5. a. To be eligible for a grant from the partnership, a consortium shall include:

(1) Each employer that employs apprentices in connection with the grant or participates in developing or providing linkage services pursuant to section 6 of this act;

(2) Each educational institution that provides classroom training or education to the apprentices or participates in developing or providing linkage services pursuant to section 6 or 7 of this act; and

(3) Any labor organization which represents workers employed by a participating employer.

b. The consortium may also include:

(1) Any business or trade organization representing the employer; and

(2) Any labor organization which represents workers in the occupation for which the apprentices will be trained.

c. Each consortium applying for a grant from the partnership shall submit an application to the committee in a form and manner prescribed by the committee. Each application from a consortium shall describe how each participant in the consortium will carry out its responsibilities in establishing a permanent apprenticeship program, including the role of each employer, educational institution and, where applicable, labor organization, in developing curriculum and occupation skill standards, the role of each employer in providing skilled workers as job coaches and mentors for apprentices and the role of each participant in establishing and operating related linkage programs pursuant to section 6 or 7 of this act. The application shall include a comprehensive long-term human resource development plan from each participating employer and a commitment from participating employers to continue participation in the apprenticeship program on a long-term basis significantly beyond the term of the grant.

d. Each member of the committee and each member of the council may direct or request the department or agency that member represents on the committee or council to provide whatever technical assistance the member deems appropriate in the preparation of an application by a consortium.

e. Each business, business organization, labor organization and educational institution included in a consortium applying for a grant shall be permitted to participate in planning for the use of grant moneys. No grant moneys shall be provided to a business employing workers represented by a labor organization without

the written consent of both the business and the collective bargaining unit and, where no labor organization represents the employees, no grant shall be provided without the written consent of both the business and a labor organization, if any exists, which represents workers in the occupation for which the apprentices will be trained.

f. Grants awarded pursuant to this section or section 6 or 7 of this act shall be awarded by the committee, in consultation with the council, based on the committee's determination of which applying consortia are most likely to successfully create permanent new apprenticeship programs in occupations or industries which do not currently have apprenticeship programs in this State or are most likely to successfully create linkage programs for new or existing apprenticeship programs in compliance with the requirements of this act. When considering applications for grants made pursuant to this section or section 6 or 7 of this act, the committee shall give priority to any applicant which made a valid application to the Department of Education for a Youth Apprenticeship grant prior to June 15, 1993. The committee, the Department of Labor and the Department of Education shall provide assistance to the applicant in making whatever modifications are necessary to bring the application into compliance with the provisions of this act. If the occupation for which training was to be provided under the Youth Apprenticeship grant application is not an occupation which currently has an apprenticeship program in this State, the committee, the Department of Labor and the Department of Education shall assist the applicant in modifying the application so that it provides for the creation of a new apprenticeship program.

g. Except that a grant to establish linkage programs pursuant to sections 6 and 7 of this act for an existing apprenticeship program which shall provide funding only for the linkage programs, each grant to a consortium shall include subgrants to each of the following consortium participants that seeks a subgrant:

(1) A subgrant to each participating employer to pay costs to the employer during the term of the grant related to the establishment or operation of the apprenticeship program and any associated linkage program established pursuant to sections 6 and 7 of this act, except for the wages of apprentices or student learners, which shall be paid entirely by the employer. The costs paid by the subgrant may include, but are not limited to: employer costs of developing curriculum and occupation skill standards; employer costs of providing skilled workers as job coaches and mentors or other employer-sponsored services for apprentices or

student learners, including tuition for classes at the option of the employer when not available from other sources; and other employer costs in establishing and operating related linkage programs pursuant to section 6 or 7 of this act, including any employer involvement in counseling and recruitment efforts. These subgrants shall be administered by the committee and shall be financed by moneys appropriated to the partnership pursuant to this act. A subgrant may also be provided pursuant to this paragraph to a participating labor organization which incurs costs related to the grant;

(2) A subgrant to each participating educational institution providing classroom training and education for apprentices under the grant to pay costs to the institution during the term of the grant related to the establishment or operation of the apprenticeship program, which may include, but are not limited to, staff and staff development costs, costs of developing curriculum and occupational skill standards, costs of child care for apprentices who are parents, and costs related to increased responsibilities for apprenticeship coordinators when not available from other sources. These subgrants shall be financed by moneys appropriated to the partnership pursuant to this act and shall be administered by the committee in consultation with the Chancellor of Higher Education, and the committee is authorized to require such matching funds from the institution as the committee deems appropriate;

(3) A subgrant to each educational institution which participates in developing or operating any linkage program established pursuant to section 6 of this act to pay costs to the institution during the term of the grant related to the linkage program which may include, but are not limited to, staff and staff development costs, costs of developing curriculum and occupational skill standards, costs of child care for student learners or apprentices who are parents, and costs related to increased responsibilities for apprenticeship coordinators when not available from other sources. These subgrants shall be financed by moneys appropriated to the partnership pursuant to this act and shall be administered by the committee, which is authorized to require such matching funds from the institution as the committee deems appropriate; and

(4) A subgrant to each educational institution which participates in developing or operating any linkage program established pursuant to section 7 of this act to pay costs to the institution during the term of the grant related to the linkage program. These subgrants shall be financed by moneys appropriated to the partnership pursuant to this act and shall be administered by the

committee in consultation with the Chancellor of Higher Education, and the committee is authorized to require such matching funds from the institution as the committee deems appropriate.

C.34:15E-6 School-to-apprenticeship linkage program, establishment.

6. a. Each consortium which is awarded a grant from the partnership shall establish a school-to-apprenticeship linkage program for high school students, which shall include the development of the curriculum which will best prepare students to qualify for apprenticeships established under the grant, thus encouraging high school completion and increasing graduation rates. Grants may also be provided to a consortium pursuant to this section to create new linkage programs for existing apprenticeship programs. The linkage program may include workplace experience, but not in violation of applicable child labor standards, and shall not involve any reduction of the classroom time of a participating student or of academic standards. The provisions of this section shall not be construed as prohibiting nontraditional scheduling of classroom time. If the school-to-apprenticeship linkage program includes a workplace experience component:

(1) The student shall be regarded as a student learner and subject to the provisions of section 1 of P.L.1993, c. (C.) (pending before the Legislature as Assembly Bill, No. 2619);

(2) The workplace experience component shall be regarded as cooperative vocational education and subject to the provisions of section 1 of P.L.1993, c. (C.)(pending before the Legislature as Assembly Bill, No. 2619); and

(3) Employers participating in the consortium who hire student learners shall do so based on recommendations of the students' educational institutions which give consideration to the overall academic achievement of the students.

To the greatest extent permitted by federal law, a participating employer shall also consider the overall academic achievement of students when selecting apprentices under the grant.

b. Each school-to-apprenticeship linkage program shall include counseling, recruitment, child care for student learners who are parents and other services as are needed to maximize program participation by women and minority-group members who are economically disadvantaged individuals, have barriers to employment, or both. The objectives of these services shall include increasing the success of women in nontraditional

employment and encouraging greater academic achievement among at-risk and other students.

C.34:15E-7 Program link to post-secondary education options established.

7. Each consortium which is awarded a grant from the partnership shall establish a program which provides the option of linkages from apprenticeship to subsequent post-secondary education. Grants may also be provided to consortiums pursuant to this section to create new linkage programs for existing apprenticeship programs. Each participating educational institution in a consortium which is awarded a grant shall develop or modify the classroom curriculum for apprentices to make the classroom training applicable toward associate and baccalaureate degrees. In addition, participating educational institutions shall develop, to the extent feasible, articulation in post-secondary programs which provides participating apprentices with options to progress from apprenticeable trades to professional occupations. The purpose of the program is to enhance the prestige of education for skilled technical work by providing front-line workers with opportunities for lifelong vocationally-relevant learning and advancement.

C.34:15E-8 Youth Transitions to Work Partnership Advisory Council established.

8. a. There is established in, but not of, the Department of Labor, the Youth Transitions to Work Partnership Advisory Council, which shall consist of 14 members as follows: the Commissioners of Labor and Education and the Chancellor of Higher Education, each of whom shall serve ex officio; the New Jersey State Director for the Bureau of Apprenticeship and Training, U.S. Department of Labor; and 10 members, appointed by the Governor with the advice and consent of the Senate, including: three representatives of private business in the State, two of which shall be representatives of small business and one of which shall be a representative of advanced technology business; an individual with experience in the delivery of education with a workbased learning component at an institution of higher education; an individual with experience in the delivery of vocational education at the secondary education level; an individual with experience in the delivery of academic education at the secondary education level; a representative of the New Jersey Educational Association; a representative of the New Jersey School Boards Association; and two representatives of labor organizations in the State. The 10 members appointed pursuant to this section shall be appointed for terms of five years, except that of the 10 members

first appointed, four shall be appointed for five years, three shall be appointed for three years, and three shall be appointed for two years. Of the members appointed pursuant to this section, not more than five shall be of the same political party, and each shall hold office for the term of appointment and until his successor is appointed and qualified. Any member may be removed from office by the Governor, for cause, after a hearing and may be suspended by the Governor pending the completion of the hearing. A member appointed to fill a vacancy occurring prior to the expiration of the term shall have a term of appointment for the unexpired portion of the term only. All vacancies shall be filled in the same manner as the original appointment. Members of the council shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties as members.

b. The council shall first organize itself upon the appointment of its members, and shall subsequently organize itself annually. In organizing itself, the council shall elect a chairperson and vice-chairperson from among its members. Each member shall be entitled to one vote on all matters which may come before the council. No determination, decision or action of the council shall be made or taken unless a majority of the members votes in favor of the action.

c. The purposes of the council are to review applications for grants from the partnership and consult with the committee in the committee's determination of which grants to award and in the committee's coordination of the activities in connection with the partnership of the Departments of Labor, Education and Higher Education. The committee and the council shall be entitled to call to their assistance and avail themselves of services of employees of those departments as the committee deems necessary in order to perform the duties of the committee and the council, within the limits of funds appropriated or otherwise made available to the committee and the council for their purposes. The committee shall determine the allocation between the committee and council of the moneys provided to the committee and council pursuant to subsection b. of section 11 of this act.

C.34:15C-8.3 Annual evaluation, report on Youth Transitions.

9. The State Employment and Training Commission shall conduct an annual, comprehensive evaluation of the activities of the partnership and make an annual report to the Governor, the Legislature and the committee and the council regarding the effectiveness of the partnership in implementing the purposes of

this act during the previous State fiscal year. The report made by the commission pursuant to this section for the fiscal year ending June 30, 1996 shall be provided to the Governor, the Legislature and the committee and the council not later than December 31, 1996 and shall include an assessment of the appropriateness of continuing or expanding the partnership and, if the commission determines that the partnership should be continued or expanded, draft legislation to do so, which shall include any modifications in this act or other law deemed appropriate by the commission, including possible modifications of P.L.1992, c.44 (C.34:15D-12 et al.) to increase funding of the partnership and the possible provision of ongoing funding by the partnership of apprenticeship programs, linkage programs or both.

10. Section 9 of P.L.1992, c.43 (C.34:15D-9) is amended to read as follows:

C.34:15D-9 Workforce Development Partnership Fund.

9. A restricted, nonlapsing, revolving Workforce Development Partnership Fund, to be managed and invested by the State Treasurer, is hereby established to: provide employment and training services to qualified displaced, disadvantaged and employed workers by means of training grants or customized training services; provide for the other costs indicated in subsection a. of section 4 of this act; and facilitate the provision of education and training to youth by means of grants provided by the Youth Transitions to Work Partnership pursuant to the provisions of P.L.1993, c.268 (C.34:15E-1 et al.). All appropriations to the fund, all interest accumulated on balances in the fund and all cash received for the fund from any other source shall be used solely for the purposes specifically delineated by this act.

Beginning January 1, 1995, and for all subsequent calendar years, the balance in the fund as of the previous December 31, as determined in accordance with generally accepted accounting principles, shall not exceed 1.5 times the amount of contributions deposited for the calendar year then ended. If the balance exceeds this amount, the excess shall be deposited into the unemployment compensation fund within seven business days of the date that the determination is made.

11. a. There is appropriated \$4,000,000 to the Youth Transitions to Work Partnership as follows:

(1) \$2,500,000 from the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13);

(2) \$500,000 from the funds allotted to New Jersey pursuant to subparagraphs (A), (B) and (C) of subsection (a)(2) of 29 U.S.C. §1533 for school-to-work transition services, literacy and lifelong learning services and programs to train, place and retain women in nontraditional employment;

(3) \$400,000 from the funds allotted to New Jersey pursuant to Title II of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. §2331 et seq.);

(4) \$300,000 from the funds allotted to New Jersey pursuant to Part E of Title III of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. §2394 et seq.); and

(5) \$300,000 from funds allotted to New Jersey pursuant to subsection (a)(2)(D) of 29 U.S.C. §1533 to facilitate coordination of education and training services.

b. Of the amount appropriated to the program pursuant to subsection a. of this section, not more than 7.5% shall be used for expenses incurred by the committee and the council in carrying out their responsibilities pursuant to sections 5 and 8 of this act.

c. The Governor, the State Board of Education, the Board of Higher Education, the Commissioners of Labor and Education and the Chancellor of Higher Education, shall, in a timely manner, make whatever amendments, modifications or other adjustments to any plans, agreements or other documents submitted to the relevant agencies of the federal government are necessary to obtain approval for use of federal funds to implement the provisions of this act. Any appropriation of funds pursuant to paragraph (3) or (4) of subsection a. of this section shall be subject to certification by the relevant federal agency that the agency has determined that the use of federal funds for the partnership is permitted by federal law, if that determination is necessary to prevent the loss of those funds to the State. In any case in which funds appropriated pursuant to paragraph (2), (3), (4) or (5) of subsection a. of this section are included in a grant provided by the partnership, provisions shall be made to ensure that the consortium receiving the grant shall comply with all relevant requirements of federal law, including, but not limited to, requirements regarding the selection and the qualifications of trainees. In any case in which funds appropriated pursuant to paragraph (2) or (5) of subsection a. of this section, the Department of Education shall enter into such agreements with administrative entities in service delivery areas as are required by federal law in connection with the use of those funds. Nothing in

this section shall be construed as prohibiting the use of other available funds to implement the purpose of this act, including the use of those funds as matching funds for any appropriation made pursuant to this section. To the extent possible, the committee shall obtain from consortium participants non-federal matching funds as may be needed in connection with the appropriations made pursuant to paragraphs (2) and (3) of subsection a. of this section and may also obtain matching funds from consortium participants in connection with appropriations made pursuant to paragraphs (1) and (4) of subsection a. of this section.

12. Section 4 of P.L.1992, c.43 (C.34:15D-4) is amended to read as follows:

C.34:15D-4 Workforce Development Partnership Program established.

4. a. The Workforce Development Partnership Program is hereby established in the Department of Labor and shall be administered by the Commissioner of Labor. The purpose of the program is to provide qualified displaced, disadvantaged and employed workers with the employment and training services most likely to provide the greatest opportunity for long-range career advancement with high levels of productivity and earning power. To implement that purpose, the program shall provide those services by means of training grants or customized training services, to the extent that funding for the services is not available from federal or other sources. The commissioner is authorized to expend moneys from the Workforce Development Partnership Fund to provide the training grants or customized training services and provide for each of the following:

(1) The cost of counseling required pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7), to the extent that adequate funding for counseling is not available from federal or other sources;

(2) Reasonable administrative costs not to exceed 10% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any one fiscal year, except for additional start-up administrative costs approved by the Director of the Office of Management and Budget during the first year of the program's operation;

(3) Reasonable costs, not exceeding 0.5% of the revenues collected pursuant to section 2 of P.L.1992, c.44 (C.34:15D-13) during any one fiscal year, as required by the State Employment and Training Commission to design criteria and conduct an annual evaluation of the program; and

(4) The cost of reimbursement to individuals for excess contributions pursuant to section 6 of P.L.1992, c.44 (C.34:15D-17).

b. Not more than 10% of the moneys received by any service provider pursuant to this act shall be expended on anything other than direct costs to the provider of providing the employment and training services, which direct costs shall not include any administrative or overhead expense of the provider.

c. Training and employment services shall be provided to a worker who receives counseling pursuant to section 7 of P.L.1992, c.43 (C.34:15D-7) only if the counselor who evaluates the worker pursuant to that section determines that the worker can reasonably be expected to successfully complete the training and education identified in the Employability Development Plan developed pursuant to that section for the worker.

d. All vocational training provided under this act:

(1) Shall be training which is likely to substantially enhance the individual's marketable skills and earning power; and

(2) Shall be training for a labor demand occupation, except for:

(a) Customized training provided to the present employees of a business which the commissioner deems to be in need of the training to prevent job loss caused by obsolete skills, technological change or national or global competition; or

(b) Customized training provided to employees at a facility which is being relocated from another state into New Jersey.

e. Not less than 27% of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified displaced workers. Eight percent of the total revenues dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified disadvantaged workers. Not less than 3% of the total revenues dedicated to the program during any one fiscal year shall be reserved for occupational safety and health training.

f. Funds available under the program shall not be used for activities which induce, encourage or assist: any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers; any replacement of laid off workers by trainees; or any relocation of operations resulting in a loss of employment at a previous workplace located in the State.

g. On-the-job training shall not be funded by the program for any employment found by the commissioner to be of a level of skill and complexity too low to merit training. The duration of

on-the-job training funded by the program for any worker shall not exceed the duration indicated by the Specific Vocational Preparation Code developed by the United States Department of Labor for the occupation for which the training is provided and shall in no case exceed 26 weeks. The department shall set the duration of on-the-job training for a worker for less than the indicated maximum, when training for the maximum duration is not warranted because of the level of the individual's previous training, education or work experience. On-the-job training shall not be funded by the program unless it is accompanied, concurrently or otherwise, by whatever amount of classroom-based vocational training, remedial education or both, is deemed appropriate for the worker by the commissioner.

h. Employment and training services funded by the program shall not replace, supplant, compete with or duplicate in any way approved apprenticeship programs.

i. No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

13. This act shall take effect immediately and shall expire on December 31, 1997.

Approved September 3, 1993.

CHAPTER 269

AN ACT concerning joint insurance funds for local governmental units, amending P.L.1976, c.68, and N.J.S.40A:2-22 and amending and supplementing P.L.1983, c.372.

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

C.40A:10-38.1 Commissioners; additional powers, environmental insurance.

1. In addition to the powers and authority granted to commissioners pursuant to section 3 of P.L.1983, c.372 (C.40A:10-38),

the commissioners of a joint insurance fund established pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36) shall have the power: a. to adopt and use a corporate seal; b. to sue and be sued; and c. to bond or to borrow funds and incur indebtedness by other means, including letters of credit, for the purpose of providing environmental impairment liability insurance, and to provide for and secure the payment of bonds and indebtedness, except that the total aggregate amount of any such bonds, borrowings and letters of credit outstanding at any one time shall not exceed \$10,000,000. Bonds shall be sold by a joint insurance fund pursuant to the "Local Bond Law," N.J.S.40A:2-1 et seq., but shall not be subject to the debt limitation set forth in N.J.S.40A:2-6.

C.40A:10-38.2 Definitions.

2. As used in this act:

- a. "Bond" means bonds and other obligations, such as letters of credit, authorized and issued by a joint insurance fund.
- b. "Bond resolution" means a resolution adopted by a joint insurance fund describing the bonds to be authorized and issued and the bonds or indebtedness to be funded or refunded.
- c. "Joint insurance fund" or "fund" means a joint insurance fund created pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36).

C.40A:10-38.3 Bylaws, plan of risk management; filing proof of approval.

3. A copy of the proof of approval of the bylaws and plan of risk management issued by the Commissioner of Insurance pursuant to section 6 of P.L.1983, c.372 (C.40A:10-41) shall be filed in the Office of the Secretary of State, the Director of the Division of Local Government Services, and the Commissioner of Insurance. Upon proof of such filing, the joint insurance fund therein referred to shall, in any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract or obligation or act of the joint insurance fund, be conclusively deemed to have been lawfully and properly created, organized and established and authorized to transact business and exercise its powers under this act. Copies of the filing, duly certified by the Secretary of State, shall be admissible in evidence in any suit, action or proceeding and shall be conclusive evidence of due and proper filing thereof.

C.40A:10-38.4 Issuance of bonds; adoption of bond resolution.

4. a. For the purpose of raising funds to establish an environmental impairment liability insurance pool or for the purpose of

funding or refunding a bond or other indebtedness, including a letter of credit in connection with environmental impairment liability insurance, a joint insurance fund shall have the power to authorize and issue or provide for the issuance of bonds pursuant to this act. No funds so raised shall be used for administrative expenses of the joint insurance fund. For such purpose, a joint insurance fund shall adopt a bond resolution which shall (1) describe the bonds to be authorized and issued and the bonds or indebtedness to be funded or refunded, if any; (2) state the cost or estimated cost of the project, if any; and (3) provide for the issuance of the bonds in accordance with section 5 of this act.

b. No bond resolution shall be adopted by a joint insurance fund pursuant to subsection a. of this section unless member local units representing at least two-thirds of the joint insurance fund's current annual assessments have approved the proposed bond resolution by resolution or ordinance of each approving member local unit, which resolution or ordinance has been duly certified by the appropriate officer of the local unit and filed with the secretary of the joint insurance fund.

c. Any debt incurred by a joint insurance fund pursuant to P.L.1993, c.269 (C.40A:10-38.1 et al.) shall be subject to the oversight provisions of sections 6, 7 and 8 of P.L.1983, c.313 (C.40A:5A-6 through 40A:5A-8).

C.40A:10-38.5 Bonds.

5. Upon adoption of a bond resolution, a joint insurance fund shall have the power to incur indebtedness, borrow money and issue its bonds for the purpose of raising funds to establish an environmental impairment liability insurance pool or funding or refunding any bonds or other indebtedness, including a letter of credit. A bond shall be authorized by the bond resolution and may be issued in one or more series. A bond shall bear the date provided in the resolution and shall mature on a date not exceeding 20 years from the date on the bond. A bond shall bear interest at a rate within the maximum rate, be in the denomination and the form, carry the conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the State, and be subject to such terms of redemption, with or without premium, as the bond resolution may provide.

C.40A:10-38.6 Sale of bonds.

6. Bonds of a joint insurance fund may be sold by the fund at public or private sale at a price determined by the commissioners of the fund.

C.40A:10-38.7 Bond resolution adoption; publication.

7. A joint insurance fund shall cause a copy of a bond resolution adopted by it to be filed for public inspection in its office and in the offices of the clerks of the local units which are members of the fund and shall thereupon cause to be published in a newspaper published or circulating in the jurisdiction of the member local units a notice stating the fact and date of the adoption, the places where the bond resolution has been filed for public inspection, and the date of the first publication. The notice also shall state that any action or proceeding of any kind in any court questioning the validity or proper authorization of a bond provided for by the bond resolution, or the validity of any covenant, agreement or contract provided for by the bond resolution shall be commenced within 20 days after the first publication of the notice. If after the notice is published, no action or proceeding questioning the validity or proper authorization of a bond provided for by the bond resolution referred to in the notice, or the validity of a covenant, agreement or contract provided for by the bond resolution is commenced within 20 days after the first publication of the notice, then all member local units of the fund, their residents, and all other persons shall be forever barred from commencing an action or proceeding in a court or from pleading a defense to an action or proceeding, questioning the validity of the creation and establishment of the joint insurance fund, or the validity or proper authorization of the bonds, or the validity of a covenant, agreement or contract, and the fund shall be conclusively deemed to have been validly created and established and to be authorized to transact business and exercise powers as a joint insurance fund under this act, and the bond, covenant, agreement or contracts shall be conclusively deemed to be a valid and binding obligation in accordance with its terms and tenor.

C.40A:10-38.8 Negotiability of bonds.

8. Any provision of any law to the contrary notwithstanding, bonds issued pursuant to this act shall be fully negotiable within the meaning and for all purposes of the negotiable instruments law of the State, and each holder of a bond, or of any coupon appurtenant thereto, by accepting the bond or coupon shall be conclusively deemed to have agreed that the bond or coupon is and shall be fully negotiable within the meaning and for all purposes of the negotiable instruments law.

C.40A:10-38.9 Payment of bonds; powers of joint insurance fund.

9. A joint insurance fund, in order to secure the payment of its bonds shall have the power by provision in the bond resolution to covenant and agree with the several holders of a bond, as to:

- a. the custody, security, use, expenditure or application of the proceeds of a bond;
- b. payment of the principal of or interest on a bond and the sources and methods thereof, the rank or priority of a bond obligation as to a lien or security, or the acceleration of the maturity of a bond;
- c. the use and disposition of any moneys of the joint insurance fund;
- d. pleading, setting aside, depositing or trusteeing all or any moneys of the joint insurance fund to secure the payment of the principal of or interest on the bond or the payment of expenses of operation of the fund, and the powers and duties of a trustee with regard thereto;
- e. the setting aside out of the moneys of the joint insurance fund of reserves and sinking funds, and the source, custody, security, regulation, application and disposition thereof;
- f. determination or definition of the moneys of the joint insurance fund or of the expenses of its operation;
- g. the assessments or other charges imposed by the joint insurance fund and the fixing, establishment, collection and enforcement of same, the amount to be raised thereby, and the disposition and application of the amount charged or collected;
- h. the assumption or payment of any indebtedness, lien or other claim against the joint insurance fund or any obligation having or which may have a lien on any moneys of the fund;
- i. limitations on the issuance of additional bonds or on the incurrence of indebtedness of the joint insurance fund;
- j. vesting in a trustee or trustees within or without the State the rights, powers and duties in trust determined by the joint insurance fund, which powers and duties may include any or all of the rights, powers and duties of the trustee appointed by the holders of bonds pursuant to section 10 of this act, and limiting or abrogating the right of the holders to appoint a trustee pursuant to section 10 of this act or limiting the rights, duties and powers of the trustee;
- k. payment of costs or expenses incident to the enforcement of the bonds or of the provisions of the bond resolution or of any covenant or contract with the holders of the bonds;
- l. the procedure, if any, by which the terms of a covenant or contract with, or duty to, the holders of bonds may be amended or abrogated, which holders of bonds are required to consent to such an amendment or abrogation before it can be enforced, and the manner in which the consent may be given or evidenced; or
- m. any other matter or course of conduct which, by recital in the bond resolution, is declared to further secure the payment of the principal of or interest on the bonds.

All provisions of the bond resolution and all covenants and agreements shall constitute valid and legally binding contracts between the joint insurance fund and the several holders of the bonds, regardless of the time of issuance of the bonds, and shall be enforceable by any holder by appropriate action, suit or proceeding in lieu of prerogative writ.

C.40A:10-38.10 Appointment of trustee, duties, powers, fees.

10. a. If the bond resolution of a joint insurance fund authorizing or providing for the issuance of a series of bonds provides in substance that the holders of the bonds in the series shall be entitled to the benefits of this section, then in the event that there is a default in the payment of principal of or interest on any bonds of the series after the same becomes due, whether at maturity or upon call for redemption, and the default continues for a period of 30 days, or in the event that the joint insurance fund fails or refuses to carry out and perform the terms of a contract with the holders the bonds, and the failure or refusal continues for a period of 30 days after written notice to the joint insurance fund of its existence and nature, the holders of 25 percent in aggregate principal amount of the bonds of the series then outstanding by instrument or instruments filed in the Office of the Secretary of State and proved and acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of the bonds of the series for the purpose provided in this section.

b. The trustee may and upon written request of the holders of 25 percent in aggregate principal amount of the bonds of the series then outstanding shall, in the trustee's own name:

(1) by any action, writ, proceeding in lieu of prerogative writ, or other proceeding, enforce all rights of the holders of the bonds, including the right to require the joint insurance fund to charge and collect assessments adequate to carry out a contract as to, or pledge of, moneys of the fund, and to require the fund to carry out and perform the terms of a contract with the holders of the bonds or its duties under this act;

(2) bring an action upon all or any part of the bonds or interest coupons or claims appurtenant thereto;

(3) by action, require the joint insurance fund to account as if it were the trustee of an express trust for the holders of the bonds;

(4) by action, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds; or

(5) declare all the bonds due and payable, whether or not in advance of maturity, upon 30 days' prior notice in writing to the joint insurance fund and, if all defaults shall be made good, then with the consent of the holders of 25 percent of the principal amount of the bonds then outstanding, annul the declaration and its consequences.

c. The trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of the functions specifically set forth herein or incident to the general representation of the holders of bonds of the series in the enforcement and protection of their rights.

d. In any action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, appointed pursuant to this act, shall constitute taxable costs and disbursements, and all costs and disbursements allowed by the court shall be a first charge upon any assessments and moneys of the joint insurance fund pledged for the payment or security of bonds of the series.

C.40A:10-38.11 Appointment of receiver.

11. If the bond resolution of a joint insurance fund authorizing or providing for the issuance of a series of its bonds provides in substance that the holders of the bonds of the series are entitled to the benefits of section 10 of this act and further provides in substance that any trustee appointed pursuant to section 10 of this act or having the powers of such a trustee has the powers provided by this section, then the trustee, whether or not all of the bonds of the series have been declared due and payable, shall be entitled as of right to the appointment of a receiver of the joint insurance fund, and the receiver may enter upon and take possession of all moneys and other property of the joint insurance fund and fix, charge, collect, enforce and receive the assessments and all moneys thereafter arising subject to any pledge thereof or contract with the holders of the bonds relating thereto and perform the duties and carry out the contracts and obligations of the joint insurance fund in the same manner as the fund itself might do and under the direction of the court.

C.40A:10-38.12 Immunity of commissioners; nonliability of State.

12. Neither the commissioners of the joint insurance fund nor any person executing bonds issued pursuant to this act shall be liable personally on the bonds by reason of the issuance thereof. Bonds issued by a joint insurance fund pursuant to this act shall not be in any way a debt or liability of the State, either legal,

moral or otherwise, nor shall they be in any way a debt or liability of any member local unit of the fund, either legal, moral or otherwise, except as provided by P.L.1983, c.372 (C.40A:10-36 et seq.), and nothing in this act shall be construed to authorize any joint insurance fund to incur any indebtedness on behalf of or in any way to obligate the State or any member local unit.

Nothing in this act shall be construed to alter or impair the power of the commissioner to suspend or terminate the authority of any joint insurance fund created pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36) or to assume control of the insurance fund as provided under section 9 of P.L.1983, c.372 (C.40A:10-44) in order to enable a fund to meet its obligations, cover its expected losses or to liquidate, rehabilitate or otherwise modify its affairs.

13. Section 1 of P.L.1983, c.372 (C.40A:10-36) is amended to read as follows:

C.40A:10-36 Joint insurance fund; definitions.

1. a. The governing body of any local unit, including any contracting unit as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund for the purpose of insuring against liability, property damage, and workers' compensation as provided in Articles 3 and 4 of chapter 10 of Title 40A of the New Jersey Statutes, and providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents or both, through self insurance, the purchase of commercial insurance or reinsurance, or any combination thereof, and may appropriate such moneys as are required therefor. The maximum risk to be retained for group term life insurance by a joint insurance fund on a self-insured basis shall not exceed a face amount of \$5,000 per covered employee or dependent or more if approved by the Commissioners of Insurance and Community Affairs. As used in this subsection: (1) "life insurance" means life insurance as defined pursuant to N.J.S.17B:17-3; (2) "health insurance" means health insurance as defined pursuant to N.J.S.17B:17-4 or service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this State; and (3) "dependent" means dependent as defined pursuant to N.J.S.40A:10-16.

b. The governing body of any local unit, including any contracting unit as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund for the sole purpose of insuring against bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent and for coverages approved by the Commissioner of Insurance.

14. Section 2 of P.L.1983, c.372 (C.40A:10-37) is amended to read as follows:

C.40A:10-37 Insurance fund commissioners; appointment, terms, compensation.

2. Upon the establishment of a joint insurance fund, the officer or body of each local unit having the power to make appointments for the unit shall appoint one member of the governing body or employee of the local unit to represent that local unit as insurance fund commissioner. Each local unit may also appoint an alternate insurance fund commissioner who shall be a member of the governing body or employee of the local unit. Commissioners and alternates who are members of the governing body shall hold office for two years or for the remainder of their terms of office as members of the governing body, whichever shall be less, and until their successors shall have been duly appointed and qualified. Commissioners and alternates who are employees of the local unit shall hold office at the pleasure of the appointing officer or body. In the event that the number of local units represented is an even number, an additional commissioner shall be annually selected by the participating local units on a rotating basis. If the total number of member local units exceeds seven, the commissioners shall annually meet to select not more than seven commissioners to serve as the executive committee of the fund. The commissioners may also select not more than seven commissioners to serve as alternates on the executive committee. The executive committee shall exercise the full power and authority of the commission. Vacancies on the executive committee shall be filled by election of the entire board. The commissioners shall serve without compensation, except that the commissioners may vote to pay themselves a fee for attending commission meetings not to exceed \$150 per meeting and the commissioners may vote to pay commissioners who serve on an executive committee a fee for attending executive committee meetings not to exceed \$150 per

meeting. Any vacancy in the office of insurance fund commissioner or alternate, caused by any reason other than expiration of term as a member of the local unit governing body, shall be filled by the appointing authority in the manner generally prescribed by law. The commission shall annually elect a chairman and a secretary.

In the case of a joint insurance fund established for the purposes of providing environmental liability coverage pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), each member of that joint insurance fund shall have proportional voting based upon the current year's assessment.

C.40A:10-38.13 Insurance producers.

15. The bylaws of a joint insurance fund may include procedures to recognize and pay commissions or fees to insurance producers appointed by the fund, if any, or producers appointed by the member local units, if any, to advise the member local units on insurance related matters and to provide other related services to member local units as specified in the bylaws.

The commissioners of a joint insurance fund shall file with the commissioner a description of any producer arrangement plan by which producers, who shall be licensed pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.), represent member local units in their dealings with the joint insurance fund. The description shall include, but not be limited to, copies of all producer contracts, which shall include a description of the producers' obligations, responsibilities and compensation; duration of contracts; and an indication whether the contracts are subject to renewal.

Whenever a joint insurance fund or member local unit employs a producer to perform risk assessment or risk management, the commissioners of the joint insurance fund shall file with the Commissioner of Insurance a copy of the producer contract for review by the commissioner.

16. Section 3 of P.L.1976, c.68 (C.40A:4-45.3) is amended to read as follows:

C.40A:4-45.3 Municipalities; limitation exceptions.

3. In the preparation of its budget a municipality shall limit any increase in said budget to 5% or the index rate, whichever is less, over the previous year's final appropriations subject to the following exceptions:

- a. (Deleted by amendment, P.L.1990, c.89.)

b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditure would be otherwise bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

c. (1) An increase based upon emergency temporary appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.

(2) (Deleted by amendment, P.L.1990, c.89.)

The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or j. below;

d. All debt service, including that of a Type I school district;

e. Upon the approval of the Local Finance Board in the Division of Local Government Services, amounts required for funding a preceding year's deficit;

f. Amounts reserved for uncollected taxes;

g. (Deleted by amendment, P.L.1990, c.89.)

h. Expenditure of amounts derived from new or increased construction, housing, health or fire safety inspection or other service fees imposed by State law, rule or regulation or by local ordinance;

i. Any amount approved by any referendum;

j. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a municipality and any other municipality, county, school or other district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or political subdivision of this State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60 through 13:17-76) by a constituent municipality to the intermunicipal account; (3) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in pro-

viding the facility which is leased, in whole or in part; and (4) any repayments under a loan agreement entered into in accordance with the provisions of section 5 of P.L.1992, c.89.

k. (Deleted by amendment, P.L.1987, c.74.)

l. Appropriations of federal, county, independent authority or State funds, or by grants from private parties or nonprofit organizations for a specific purpose, and amounts received or to be received from such sources in reimbursement for local expenditures. If a municipality provides matching funds in order to receive the federal, county, independent authority or State funds, or the grants from private parties or nonprofit organizations for a specific purpose, the amount of the match which is required by law or agreement to be provided by the municipality shall be excepted;

m. (Deleted by amendment, P.L.1987, c.74.)

n. (Deleted by amendment, P.L.1987, c.74.)

o. (Deleted by amendment, P.L.1990, c.89.)

p. (Deleted by amendment, P.L.1987, c.74.)

q. (Deleted by amendment, P.L.1990, c.89.)

r. Amounts expended to fund a free public library established pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;

s. (Deleted by amendment, P.L.1990, c.89.)

t. Amounts expended in preparing and implementing a housing element and fair share plan pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et al.) and any amounts received by a municipality under a regional contribution agreement pursuant to section 12 of that act;

u. Amounts expended to meet the standards established pursuant to the "New Jersey Public Employees' Occupational Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

v. (Deleted by amendment, P.L.1990, c.89.)

w. Amounts appropriated for expenditures resulting from the impact of a hazardous waste facility as described in subsection c. of section 32 of P.L.1981, c.279 (C.13:1E-80);

x. Amounts expended to aid privately owned libraries and reading rooms, pursuant to R.S.40:54-35;

y. (Deleted by amendment, P.L.1990, c.89.)

z. (Deleted by amendment, P.L.1990, c.89.)

aa. Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;

bb. Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically autho-

rized pursuant to a declaration of an emergency by the President of the United States or by the Governor;

cc. Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;

dd. Expenditures of amounts actually realized in the local budget year from the sale of municipal assets if appropriated for non-recurring purposes or otherwise approved by the director;

ee. Any local unit which is determined to be experiencing fiscal distress pursuant to the provisions of P.L.1987, c.75 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible municipality" as defined in section 3 of P.L.1987, c.75 (C.52:27D-118.26), and which has available surplus pursuant to the spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et seq.), may appropriate and expend an amount of that surplus approved by the director and the Local Finance Board as an exception to the spending limitation. Any determination approving the appropriation and expenditure of surplus as an exception to the spending limitations shall be based upon:

- 1) the local unit's revenue needs for the current local budget year and its revenue raising capacity;

- 2) the intended actions of the governing body of the local unit to meet the local unit's revenue needs;

- 3) the intended actions of the governing body of the local unit to expand its revenue generating capacity for subsequent local budget years;

- 4) the local unit's ability to demonstrate the source and existence of sufficient surplus as would be prudent to appropriate as an exception to the spending limitations to meet the operating expenses for the local unit's current budget year; and

- 5) the impact of utilization of surplus upon succeeding budgets of the local unit;

ff. Amounts expended for the staffing and operation of the municipal court;

gg. Amounts appropriated for the cost of administering a joint insurance fund established pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), but not including appropriations for claims payments by local member units.

17. Section 4 of P.L.1976, c.68 (C.40A:4-45.4) is amended to read as follows:

C.40A:4-45.4 Limitation on increase in county tax levies over previous year; exceptions.

4. In the preparation of its budget, a county may not increase the county tax levy to be apportioned among its constituent municipalities in excess of 5% or the index rate, whichever is less, of the previous year's county tax levy, subject to the following exceptions:

a. The amount of revenue generated by the increase in valuations within the county, based solely on applying the preceding year's county tax rate to the apportionment valuation of new construction or improvements within the county, and such increase shall be levied in direct proportion to said valuation;

b. Capital expenditures, including appropriations for current capital expenditures, whether in the capital improvement fund or as a component of a line item elsewhere in the budget, provided that any such current capital expenditures would be otherwise bondable under the requirements of N.J.S.40A:2-21 and 40A:2-22;

c. (1) An increase based upon emergency temporary appropriations made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the county, and over which the governing body had no control and for which it could not plan and emergency appropriations made pursuant to N.J.S.40A:4-46. Emergency temporary appropriations and emergency appropriations shall be approved by at least two-thirds of the governing body and by the Director of the Division of Local Government Services, and shall not exceed in the aggregate 3% of the previous year's final current operating appropriations.

(2) (Deleted by amendment, P.L.1990, c.89.)

The approval procedure in this subsection shall not apply to appropriations adopted for a purpose referred to in subsection d. or f. below;

d. All debt service;

e. (Deleted by amendment, P.L.1990, c.89.)

f. Amounts required to be paid pursuant to (1) any contract with respect to use, service or provision of any project, facility or public improvement for water, sewerage, parking, senior citizen housing or any similar purpose, or payments on account of debt service therefor, between a county and any other county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation, body corporate and politic or

political subdivision of this State; and (2) any lease of a facility owned by a county improvement authority when the lease payment represents the proportionate amount necessary to amortize the debt incurred by the authority in providing the facility which is leased, in whole or in part;

g. That portion of the county tax levy which represents funding to participate in any federal or State aid program and amounts received or to be received from federal, State or other funds in reimbursement for local expenditures. If a county provides matching funds in order to receive the federal or State or other funds, only the amount of the match which is required by law or agreement to be provided by the county shall be excepted;

h. (Deleted by amendment, P.L.1987, c.74.)

i. (Deleted by amendment, P.L.1990, c.89.)

j. (Deleted by amendment, P.L.1990, c.89.)

k. (Deleted by amendment, P.L.1990, c.89.)

l. Amounts expended to meet the standards established pursuant to the "New Jersey Public Employees' Occupational Safety and Health Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

m. (Deleted by amendment, P.L.1990, c.89.)

n. (Deleted by amendment, P.L.1990, c.89.)

o. (Deleted by amendment, P.L.1990, c.89.)

p. Extraordinary expenses, approved by the Local Finance Board, required for the implementation of an interlocal services agreement;

q. Any expenditure mandated as a result of a natural disaster, civil disturbance or other emergency that is specifically authorized pursuant to a declaration of an emergency by the President of the United States or by the Governor;

r. Expenditures for the cost of services mandated by any order of court, by any federal or State statute, or by administrative rule, directive, order, or other legally binding device issued by a State agency which has identified such cost as mandated expenditures on certification to the Local Finance Board by the State agency;

s. That portion of the county tax levy which represents funding to a county college in excess of the county tax levy required to fund the county college in local budget year 1992;

t. Amounts appropriated for the cost of administering a joint insurance fund established pursuant to subsection b. of section 1 of P.L.1983, c.372 (C.40A:10-36), but not including appropriations for claims payments by local member units.

18. N.J.S.40A:2-22 is amended to read as follows:

Maximum bond terms.

40A:2-22. The governing body of the local unit shall determine the period of usefulness of any purpose according to its reasonable life computed from the date of the bonds, which period shall not be greater than the following:

a. Buildings and structures.

1. Bridges, including retaining walls and approaches, or permanent structures of brick, stone, concrete or metal, or similar durable construction, 30 years.

2. Buildings, including the original furnishings and equipment therefor:

Class A: A building, of which all walls, floors, partitions, stairs and roof are wholly of incombustible material, except the window frames, doors, top flooring and wooden handrails on the stairs, 40 years;

Class B: A building, the outer walls of which are wholly of incombustible material, except the window frames and doors, 30 years;

Class C: A building which does not meet the requirements of Class A or Class B, 20 years.

3. Buildings or structures acquired substantially reconstructed or additions thereto, one-half the period fixed in this subsection for such buildings or structures.

4. Additional furnishings, five years.

b. Marine improvements.

1. Harbor improvements, docks or marine terminals, 40 years.

2. Dikes, bulkheads, jetties or similar devices of stone, concrete or metal, 15 years; of wood or partly of wood, 10 years.

c. Additional equipment and machinery.

1. Additional or replacement equipment and machinery, 15 years.

2. Voting machines, 15 years.

d. Real property.

1. Acquisition for any public purpose of lands or riparian rights, or both, and the original dredging, grading, draining or planting thereof, 40 years.

2. Improvement of airport, cemetery, golf course, park, playground, 15 years.

3. Stadia of concrete or other incombustible materials, 20 years.

e. Streets or thoroughfares.

1. Elimination of grade crossings, 35 years.

2. Streets or roads:

Class A: Rigid pavement. A pavement of not less than eight inches of cement concrete or a six-inch cement concrete base with

not less than three-inch bituminous concrete surface course, or equivalent wearing surface, 20 years.

Flexible pavement. A pavement not less than 10 inches in depth consisting of five-inch macadam base, three-inch modified penetration macadam and three-inch bituminous concrete surface course or other pavements of equivalent strength, in accordance with the findings of the American Association of State Highway Officials (AASHO) Road Test, 20 years.

Class B: Mixed surface-treated road. An eight-inch surface of gravel, stone or other selected material under partial control mixed with cement or lime and fly ash, six inches in compacted thickness with bituminous surface treatment and cover, 10 years.

Bituminous penetration road. A five-inch gravel or stone base course and a three-inch course bound with a bituminous or equivalent binder, 10 years.

Class C: Mixed bituminous road. An eight-inch surface of gravel, stone, or other selected material under partial control mixed with bituminous material one inch or more in compacted thickness, five years.

Penetration macadam road. A road of sand, gravel or water-bound macadam, or surfacing with penetration macadam, five years.

3. Sidewalks, curbs and gutters of stone, concrete or brick, 10 years.

The period of usefulness in this subsection shall apply to construction and reconstruction of streets and thoroughfares.

f. Utilities and municipal systems.

1. Sewerage system, whether sanitary or storm water, water supply or distribution system, 40 years.

2. Electric light, power or gas systems, garbage, refuse or ashes incinerator or disposal plant, 25 years.

3. Communication and signal systems, 10 years.

4. House connections to publicly-owned gas, water or sewerage systems from the service main in the street to the curb or property lines where not part of original installation, five years.

g. Vehicles and apparatus.

1. Fire engines, apparatus and equipment, when purchased new, but not fire equipment purchased separately, 10 years.

2. Automotive vehicles, including original apparatus and equipment (other than passenger cars and station wagons), when purchased new, five years.

3. Major repairs, reconditioning or overhaul of fire engines and apparatus, which may reasonably be expected to extend for at least five years the period of usefulness thereof, five years.

h. The closure of a sanitary landfill facility utilized, owned or operated by a county or municipality, 15 years; provided that the closure has been approved by the Board of Public Utilities and the Department of Environmental Protection and Energy. For the purposes of this subsection "closure" means all activities associated with the design, purchase or construction of all measures required by the Department of Environmental Protection and Energy, pursuant to law, in order to prevent, minimize or monitor pollution or health hazards resulting from sanitary landfill facilities subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the costs of the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.

i. Any purpose, except vehicles, not included in the foregoing, for which obligations may be issued, 15 years.

j. The prefunding of a claims account for environmental liability claims by an environmental impairment liability insurance pool pursuant to P.L.1993, c.269 (C.40A:10-38.1 et al.), 20 years.

19. This act shall take effect 120 days next following enactment.

Approved September 8, 1993.

CHAPTER 270

AN ACT appropriating \$5,407,083 from the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, for the purpose of making State grants, as awarded by the New Jersey Historic Trust, for historic preservation projects for the renovation, restoration and rehabilitation of historic properties owned by State, county and municipal governments and by tax exempt non-profit organizations.

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

1. a. There is appropriated to the New Jersey Historic Trust from the "Cultural Centers and Historic Preservation Fund" established pursuant to section 20 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, the sum of \$5,407,083 for the purpose of making State grants, as awarded by the New Jersey Historic Trust, for historic preservation projects for the renovation, restoration and rehabilitation of historic properties owned by State, county and municipal governments and by tax exempt nonprofit organizations, which sum shall include administrative costs of the New Jersey Historic Trust incurred in administering this act. The following projects are eligible for funding with the monies appropriated pursuant to this section:

<u>COUNTY</u>	<u>PROPERTY NAME</u>	<u>LOCATION</u>	<u>NAME OF ORGAN- IZATION</u>	<u>GRANT AWARD</u>
Burlington	Collins-Jones House	Burlington	Burlington County Historical Society	\$28,678
Camden	Solomon-Wesley United Methodist Church	Blackwood	Solomon-Wesley Church	33,887
Camden	Walt Whitman Historic District	Camden	Div. of Parks and Forestry/DEPE	391,600
Camden	Pomona Mall	Camden	Camden County Historical Society	38,220
Camden	Peter Mott House	Lawnside	Lawnside Historical Society, Inc.	97,900
Essex	Oakeside-Bloomfield Cultural Center	Bloomfield	Oakeside-Bloomfield Cultural Center	287,892
Essex	Krueger Mansion	Newark	City of Newark	464,188
Essex	Ballantine House	Newark	Newark Museum	330,987
Gloucester	Old Town Hall (Harrison)	Mullica Hill	The Harrison Township Historical Society, Inc.	112,211
Gloucester	Trinity Episcopal "Old Swedes" Church	Swedesboro	Trinity Episcopal "Old Swedes" Church	184,878
Hudson	St. Patrick's Parochial Bldg. Auditorium	Jersey City	St. Patrick's R.C. Church	367,300
Hunterdon	Prallsville Mills	Stockton	Delaware River Mill Society	55,000
Mercer	Princeton Baptist Church	Princeton	Princeton Baptist Church at Penns Neck	12,550

Mercer	New Jersey State House Annex	Trenton	New Jersey State Building Authority	64,000
Middlesex	New Brunswick Railroad Station	New Brunswick	City of New Brunswick	180,000
Middlesex	Metlar House	Piscataway	Piscataway Township	50,000
Middlesex	Cornelius Low House	Piscataway	Middlesex Co. Cult. & Her. Comm.	295,963
Monmouth	Court Street School	Freehold	Court Street School Education Community Center, Inc.	299,698
Monmouth	Longstreet Farm	Holmdel	Monmouth County Park System	110,000
Monmouth	Monmouth Battlefield State Park	Manalapan Township	Div. of Parks & Forestry/DEPE	478,518
Monmouth	Burrowes Mansion	Matawan	Borough of Matawan Historic Sites Commission	82,580
Morris	Museum of Early Trades and Crafts	Madison Borough	Museum of Early Trades and Crafts	80,860
Morris	Fosterfields	Morristown	Morris County Park Commission	169,809
Morris	Ford-Faesch Manor House	Rockaway	Historical Society of the Rockaways	400,000
Ocean	Wanamaker Hall	Island Heights	Island Heights Cultural and Heritage Association	150,000
Salem	Salem Municipal Building	Salem	City of Salem	81,581
Somerset	General John Frelinghuysen House	Raritan	Raritan Public Library	31,283
Sussex	First Presbyterian Church of Hamburg	Hamburg Borough	First Presbyterian Church of Hamburg	12,500
Union	Plainfield City Hall	Plainfield	City of Plainfield	200,000
Union	Union County Arts Center	Rahway	Union County Arts Center, Inc.	<u>315,000</u>
TOTAL				<u>\$5,407,083</u>

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

2. There is appropriated to the New Jersey Historic Trust the unexpended balances of the amounts appropriated pursuant to

P.L.1990, c.91 and P.L.1991, c.468 from the "Cultural Centers and Historic Preservation Fund" for the purpose of making grants for the projects listed in P.L.1990, c.91, P.L.1991, c.468, section 1 of this act, P.L.1993, c.203, P.L.1993, c.271, and P.L.1993, c.272, and for the purpose of administrative costs associated with any such projects, to the extent such funds are available as a result of project withdrawals or cost savings.

3. To the extent that monies remain available after the projects listed in section 1 of this act are offered funding from the "Cultural Centers and Historic Preservation Fund," the projects listed in P.L.1990, c.91, P.L.1991, c.468, P.L.1993, c.203, P.L.1993, c.271, and P.L.1993, c.272 shall be eligible for funding, including administrative costs of the New Jersey Historic Trust in administering this section, in a sequence consistent with the priority system established by the New Jersey Historic Trust, and shall require the approval of the Joint Budget Oversight Committee or its successor.

4. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1987, c.265.

5. This act shall take effect immediately.

Approved September 12, 1993.

CHAPTER 271

AN ACT appropriating \$197,842 from the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, for the purpose of making a State grant, as awarded by the New Jersey Historic Trust, for a historic preservation project at Cape May Point Lighthouse.

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

1. a. There is appropriated to the New Jersey Historic Trust from the "Cultural Centers and Historic Preservation Fund" established pursuant to section 20 of the "New Jersey Green Acres,

Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, the sum of \$197,842 for the purpose of making a State grant, as awarded by the New Jersey Historic Trust, for a historic preservation project at Cape May Point Lighthouse, Cape May County, which sum shall include administrative costs of the New Jersey Historic Trust incurred in administering this act. The following project is eligible for funding with the monies appropriated pursuant to this section:

<u>COUNTY</u>	<u>PROPERTY NAME</u>	<u>LOCATION</u>	<u>NAME OF ORGANIZATION</u>	<u>GRANT AWARD</u>
Cape May	Cape May Point Lighthouse	Lower Township	Mid-Atlantic Center for the Arts	\$197,842
TOTAL				<u>\$197,842</u>

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

2. To the extent that monies remain available after the project listed in section 1 of this act is offered funding from the "Cultural Centers and Historic Preservation Fund," the projects listed in P.L.1990, c.91, P.L.1991, c.468, P.L.1993, c.203, P.L.1993, c.270, and P.L.1993, c.272 shall be eligible for funding, including administrative costs of the New Jersey Historic Trust in administering this section, in a sequence consistent with the priority system established by the New Jersey Historic Trust, and shall require the approval of the Joint Budget Oversight Committee or its successor.

3. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1987, c.265.

4. This act shall take effect immediately.

Approved September 12, 1993.

CHAPTER 272

AN ACT appropriating \$567,050 from the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, for the purpose of making State grants, as awarded by the New Jersey Historic Trust, for certain historic preservation projects in Atlantic County.

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

1. a. There is appropriated to the New Jersey Historic Trust from the "Cultural Centers and Historic Preservation Fund" established pursuant to section 20 of the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L.1987, c.265, the sum of \$567,050 for the purpose of making State grants, as awarded by the New Jersey Historic Trust, for certain historic preservation projects in Atlantic County, which sum shall include administrative costs of the New Jersey Historic Trust incurred in administering this act. The following projects are eligible for funding with the monies appropriated pursuant to this section:

<u>COUNTY</u>	<u>PROPERTY NAME</u>	<u>LOCATION</u>	<u>NAME OF ORGANIZATION</u>	<u>GRANT AWARD</u>
Atlantic	Lucy the Margate Elephant	Margate	Save Lucy Committee, Inc.	\$177,050
Atlantic	Ventnor City Hall	Ventnor	City of Ventnor	<u>390,000</u>
TOTAL				<u>\$567,050</u>

b. Any transfer of any funds or project sponsor listed in subsection a. of this section shall require the approval of the Joint Budget Oversight Committee or its successor.

2. To the extent that monies remain available after the projects listed in section 1 of this act are offered funding from the "Cultural Centers and Historic Preservation Fund," the projects listed in P.L.1990, c.91, P.L.1991, c.468, P.L.1993, c.203, P.L.1993, c.270, and P.L.1993, c.271 shall be eligible for funding, including administrative costs of the New Jersey Historic Trust in administering this section, in a sequence consistent with the priority system established by the New Jersey Historic Trust, and shall require the approval of the Joint Budget Oversight Committee or its successor.

3. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1987, c.265.

4. This act shall take effect immediately.

Approved September 12, 1993.

CHAPTER 273

AN ACT appropriating \$5,000,000 from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, for the restoration of State high-hazard dams.

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 and Energy from the "1992 Dam Restoration and Clean Water Trust Fund," established pursuant to section 26 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of \$5,000,000 for the purpose of restoration of State high-hazard dams. This sum shall include administrative costs and shall be allocated as follows:

<u>Project</u>	<u>County</u>	<u>Estimated Cost</u>
Atsion Lake Dam	Burlington	\$700,000
Cranbury Lake Dam	Sussex	\$100,000
Cumberland Pond Dam	Cumberland	\$100,000
Green Turtle Pond Dam	Passaic	\$1,000,000
Lake Carasaljo Dam	Ocean	\$700,000
Musconetcong Lake Dam	Morris	\$850,000
Pohatcong Lake Dam	Ocean	\$850,000
Saxton Falls Dam	Morris	\$150,000
Skillman Lake Dam	Somerset	\$100,000
Contingency	Statewide	\$450,000

b. Any transfer of any funds listed in this section shall require the approval of the Joint Budget Oversight Committee or its successor.

c. There is appropriated to the Department of Environmental Protection and Energy such sums as may be or become available on or before June 30, 1994, due to interest earnings in the "1992 Dam Restoration and Clean Water Trust Fund" established pursuant to section 26 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, for the projects listed in this section for the restoration of State high-hazard dams and for the purpose of administrative costs associated with any such projects.

2. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1992, c.88.

3. This act shall take effect immediately.

Approved September 12, 1993.

CHAPTER 274

AN ACT concerning the collection of sales taxes by vendors, amending P.L.1966, c.30, and supplementing Title 40 of the Revised Statutes.

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

1. Section 15 of P.L.1966, c.30 (C.54:32B-15) is amended to read as follows:

C.54:32B-15 Registration.

15. Registration. (a) On or before June 20, 1966, or in the case of persons commencing business or opening new places of business after such date, within three days after such commencement or opening, every person required to collect any tax imposed by this act and every person purchasing tangible personal property for resale or lease shall file with the director a certificate of registration in a form prescribed by the director. In the case of a person commencing business or opening a new place of business on or after the first day of the third month following the enactment of P.L.1993, c.274 (C.40:52-1.3 et al.), the certificate shall be filed at least 15 business days before the commencement or opening. The director shall within five days after such registration issue, without charge, to each registrant a certificate of authority empowering the registrant to collect the tax and a duplicate thereof for each additional place of business of such registrant. Each certificate or duplicate shall state the place of business to which it is applicable. Such certificate of authority shall be prominently displayed in the place of business of the registrant. A registrant who has no regular place of doing business shall attach such certificate to his cart, stand, truck or other merchandising device. Such certificates shall be nonassignable and nontransferable and shall be surrendered to the director immediately upon the registrant's ceasing to do business at the place named.

(b) Any person who is not otherwise required to collect any tax imposed by this act and who makes sales to persons within the State of tangible personal property or services, the use of which is subject to tax under this act, may if he so elects file a certificate of registration with the director who may, in his discretion and subject to such conditions as he may impose, issue to him a certificate of authority to collect the compensating use tax imposed by this act.

C.40:52-1.3 Sales tax certificate required for licensing of certain vendors.

2. The governing body of a municipality shall not issue or authorize the issuance of a license to a vendor of tangible personal property, other than property exempted from sales and use taxation pursuant to section 14 of P.L.1980, c.105 (C.54:32B-8.2), having no fixed place of business in the municipality under the authority of subsection c. of R.S.40:52-1 without the submission of a copy of a valid certificate of authority issued to the vendor pursuant to section 15 of P.L.1966, c.30 (C.54:32B-15), empowering the vendor to collect sales tax.

3. This act shall take effect immediately and section 2 shall apply to licenses issued on and after the first day of the third month following enactment.

Approved November 24, 1993.

CHAPTER 275

AN ACT concerning the transfer of county judicial costs and fees to the State, and revising various parts of the statutory law.

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

C.2B:10-1 Short title.

1. Sections 1 through 9 of this act shall be known and may be cited as the "State Judicial Unification Act."

C.2B:10-2 Findings, declarations.

2. The Legislature finds and declares that:

a. The current method of financing the State's judicial system has created undue hardship for both the counties and the courts.

b. The counties have had to balance the financial needs of the judicial system with the need to provide essential county services and have been denied any oversight over court operations.

c. As a result of the differing funding bases among the counties, the courts have varying levels of resources available in order to fulfill their responsibilities.

d. Those differing bases and varying levels of available resources have significantly hindered the development and implementation of a unified administrative system for the courts.

e. If the State were to assume the administrative costs of the judicial system, resources would be provided on a more equitable basis and a central management system could be established by the Chief Justice of the Supreme Court.

f. Furthermore, significant property tax relief would be afforded to the citizens of this State since the counties would no longer need to generate tax revenues currently required to finance the judicial system.

g. It is, therefore, altogether fitting and proper for the State to assume the cost of the judicial system in order to unify the administrative system and to provide property tax relief.

C.2B:10-3 Definitions.

3. As used in this act:

a. "Base year amount" means the total local fiscal year 1993 expenditures for judicial costs and probation costs, including the employer pension contributions for employees who become employees of the State pursuant to this act for the 1993 actuarial valuation year but excluding the amount paid and charged in full in 1993 for equipment for court or probation purposes; less the realized revenue for judicial fees and probation fees;

b. "Director" means the Director of the Division of Local Government Services in the Department of Community Affairs;

c. "Judicial costs" means the costs incurred by the county for funding the judicial system, including but not limited to the following: salaries, health benefits and pension costs of all judicial employees, juror fees, library material costs, and centrally-budgeted items such as printing, supplies, and mail services, except that judicial costs shall not include costs incurred by employees of the surrogate's office or the sheriff's office;

d. "Judicial employee" means any person employed by the county prior to January 1, 1995 to perform judicial functions, including but not limited to employees working for the courts and the law library, employees who act as court aides and employees of the county clerk judicial function and those involved in bail processing and any person employed by a county probation office, except that employees of the surrogate's office and employees of the sheriff's office shall not be construed to be judicial employees;

e. "Judicial fees" means any fees or court costs collected by the judiciary including bail forfeitures and interest earned on bail

deposits for bail deposited after January 1, 1995 but shall not include sheriff's or surrogate's fees or fines otherwise allocated by law to counties or municipalities for offenses within the jurisdiction of municipal courts;

f. "Judicial functions" means any duties and responsibilities performed in providing any services and direct support necessary for the effective operation of the judicial system;

g. "Probation costs" means any costs incurred by the county for the operation of the county probation department, including but not limited to centrally-budgeted items such as printing, supplies and mail services;

h. "Probation fees" means any fees or fines collected in connection with the probation of any person.

C.2B:10-4 State costs, employees, and fees after 1994.

4. On and after January 1, 1995:

a. The State is required to pay for judicial costs and probation costs;

b. All judicial employees shall be employees of the State; and

c. Any judicial fees or probation fees collected shall be paid to the State Treasury.

C.2B:10-5 Certification of base year amount.

5. a. On or before February 28, 1994, the chief financial officer of the county shall certify the actual base year amount to the designee of the Administrative Office of the Courts who may then accept the amount. If accepted, a copy of the certification and acceptance shall immediately be provided to the Administrative Office of the Courts, the county Board of Chosen Freeholders, and to the director.

b. If the amount provided in subsection a. of this section has not been certified or accepted by June 1, 1994, the parties shall immediately notify the director that the matter is submitted to the director for the director to make the determination.

c. Upon submission to the director, he may require the submission of any additional documentation necessary for determination of the amount. He may also determine that a hearing be conducted if necessary before either the director or his designee. Nothing herein shall prevent the parties from continuing to negotiate a settlement up until the time the director makes a final determination.

d. If the hearing on the amount provided pursuant to subsection a. of this section extends beyond April 1, 1995, the director shall, by April 10, 1995, require such submissions as he deems necessary to set an interim base year amount to serve as the basis for the calculations described in section 6 of P.L.1993, c.275

(C.2B:10-6). The calculation for 1995 and subsequent years shall be adjusted to reflect the difference between the final determination and the interim base year amount. A decision of the director may be appealed pursuant to section 15 of P.L.1947, c.151 (C.52:27BB-15).

C.2B:10-6 Schedule for payment of county share.

6. a. In local fiscal years 1995, 1996 and 1997, each county shall pay a share of its base year amount as determined by the director based on the following schedule:

(1) 1995.....	87.5% of the base year amount;
(2) 1996.....	62.5% of the base year amount;
(3) 1997.....	50.0% of the base year amount.

b. Each county shall pay the respective amounts established in subsection a. to the State Treasurer on the following schedule:

(1) 1995.....	On May 15, 50.0% of the base year amount, and on October 1, 37.5% of the base year amount;
(2) 1996.....	On May 15, 37.5% of the base year amount, and on October 1, 25.0% of the base year amount;
(3) 1997.....	On May 15, 25.0% of the base year amount, and on October 1, 25.0% of the base year amount.

c. In local budget year 1998 and thereafter, no county shall be required to pay judicial costs or probation costs.

d. No county shall be required to pay the employer pension contribution on behalf of any employee who becomes an employee of the State under this act after the date the person becomes an employee of the State. However, notwithstanding the provisions of subsections b. and c. above, it shall continue to be the responsibility of each county to pay any additional liability for any employee who would have become an employee of the State under this act but who retired and received a benefit under P.L.1993, c.138 as provided under that act, and the liability for late enrollment of an employee in the Public Employees' Retirement System, whose date of compulsory enrollment is prior to the date the person becomes an employee of the State under this act, as provided under section 48 of P.L.1971, c.213 (C.43:15A-7.1).

C.2B:10-7 Disposition of furnishings, office equipment; service agreements; provision of claim, insurance information.

7. a. By September 1, 1994, a list shall be jointly developed by the Administrative Office of the Courts and the governing body

of each county of the furnishings and office equipment currently used by the courts which shall become the property of the State on January 1, 1995.

b. (1) The Administrative Office of the Courts and the individual county governments may enter into service agreements for:

(a) Those services the Administrative Office of the Courts determines are necessary for the county to provide for the operations of the courts in each county;

(b) The portion of the base year amount comprising debt service or lease payments for furnishings and office equipment; and

(c) Any other services or costs jointly agreed upon by the parties as necessary to the smooth transition or continued operation of the court system.

(2) If the services referred to in subparagraph (a) of paragraph (1) of subsection b. of this section had been previously provided by the county, it shall be in the sole discretion of the Administrative Office of the Courts that the services be continued, and that the county shall provide the services for a cost in approximate proportion to the cost determined in the base year amount, subject to annual cost increases negotiated by the parties.

(3) Disputes as to continuance of service and charges by the county for such services may be determined by the director and made in a manner similar to that described in section 5 of P.L.1993, c.275 (C.2B:10-5).

(4) Revenue received by the county for the service agreement shall be appropriated in accordance with the "Local Budget Law," N.J.S.40A:4-1 et seq.

c. (1) By September 1, 1994 the counties shall provide to the Administrative Office of the Courts the following:

(a) a listing of all Notices of Claims which were filed after January 1, 1994;

(b) a loss history for all lines of insurance or self insurance for the past five years;

(c) a listing of all worker's compensation, occupational, ongoing medical and dependency claims prior to January 1, 1995;

(d) a listing of all outstanding claims with insurance carriers or against third parties;

(e) a listing of all vehicles with accident damage that will be transferred pursuant to this section;

(f) plans for all facilities and construction and age information on the facilities required by the companies currently insuring the contents.

(2) Any workers' compensation claim filed by a judicial employee of a county, any tort claim, or any auto liability claim arising out of the maintenance, operation or use of any vehicle by a judicial employee of a county where the date of loss was prior to January 1, 1995 shall be the liability of the county.

C.2B:10-8 Determination of county tax levy.

8. For the purpose of determining the county tax levy upon which a county shall calculate its permissible tax levy, any amounts appropriated for the purposes described in section 6 of P.L.1993, c.275 (C.2B:10-6), shall be an exception pursuant to section 4 of P.L.1976, c.68 (C.40A:4-45.4). For the calculation of the local fiscal year 1995 permissible tax levy, the 1994 county tax levy prior to modification pursuant to section 4 of P.L.1976, c.68 (C.40A:4-45.4) shall be reduced by the base year amount calculated pursuant to section 5 of P.L.1993, c.275 (C.2B:10-5). The director is also authorized to make such adjustments to county budget cap calculations for matters unforeseen by this act, in a manner not inconsistent with the constitutional amendment authorizing this act, and section 4 of P.L.1976, c.68 (C.40A:4-45.4).

C.2B:10-9 Certification of payroll record information.

9. a. To facilitate the transfer of judicial employees from county payroll processing to the State's payroll processing system the chief financial officer of each county shall certify payroll record information on each judicial employee to the Administrative Office of the Courts according to a standard record format, procedure, and schedule collectively agreed to by representatives of the chief financial officers of the counties and the Administrative Director of the Courts and shall include the use of computer readable media in the transfer of payroll record information where applicable.

b. On December 31, 1994 the county shall issue a final paycheck which is complete and full, up to and including December 31, 1994 and satisfies all salary obligations due by the county to the judicial employees, and all deductions related to calendar year 1994 obligations of the judicial employees.

10. N.J.S.22A:2-6 is amended to read as follows:

Filing first paper in Law Division; motions; clerk's fees; use.

22A:2-6. a. Upon the filing or entering of the first paper or proceeding in any action or proceeding in the Law Division of the Superior Court, the plaintiff shall pay to the clerk \$135.00 for the first paper filed by him, which shall cover all fees payable therein

down to, and including entry of final judgment, taxation of costs, copy of costs and the issuance and recording of final process, except such as may be otherwise provided herein, or provided by law, or the rules of court. Of the \$135.00 paid to the clerk, \$40.00 shall be paid over by him to the treasurer of the county in which venue is laid for the use of the county. Any person filing an answer setting forth a counterclaim or a third party claim in such cause shall pay to the clerk \$135.00 for the first paper filed by him. Any person other than the plaintiff filing any other paper in any such cause shall pay to the clerk \$80.00 for the first paper filed by him. After December 31, 1994, the \$135.00 filing fee shall be paid to the clerk, for use by the State.

b. From July 1, 1991 to June 30, 1992 the \$80.00 fee set forth in subsection a. for the filing of a paper by a person other than the plaintiff shall be paid to the clerk, for use by the State. After June 30, 1992, of the \$80.00 paid to the clerk, \$25.00 shall be paid over by him to the treasurer of the county in which venue is laid for the use of the county. After December 31, 1994, the \$80.00 fee set forth in subsection a. for the filing of a paper by a person other than the plaintiff shall be paid to the clerk, for use by the State.

c. Any person filing a motion in any action or proceeding shall pay to the clerk \$15.00. From July 1, 1991, to June 30, 1992, the \$15.00 motion fee shall be paid to the clerk, for use by the State. After June 30, 1992, the \$15.00 motion fee shall be paid over to the treasurer of the county in which venue is laid for the use of the county. After December 31, 1994, the \$15.00 motion fee shall be paid to the clerk, for use by the State.

11. N.J.S.22A:2-7 is amended to read as follows:

Law division of Superior Court; other fees; use.

22A:2-7. a. Upon the filing, entering, docketing or recording of the following papers, documents or proceedings by either party to any action or proceeding in the Law Division of the Superior Court, the party or parties filing, entering, docketing or recording the same shall pay to the clerk of said court the following fees:

Filing of the first paper in any motion, petition or application, if not in a pending action or proceeding under section 22A:2-6 of this Title, or if made after dismissal or judgment entered other than withdrawal of money deposited in court, the moving party shall pay \$15.00 which shall cover all fees payable on such

motion, petition or application down to and including filing and entering of order therein and taxation of costs.

For withdrawal of money deposited in court where the sum to be withdrawn is less than \$100.00, no fee; where the sum is \$100.00 or more but less than \$1,000.00, a fee of \$5.00; where such sum is \$1,000.00 or more, a fee of \$10.00.

Entering judgment on bond and warrant by attorney and issuance of one final process, \$15.00 in lieu of the fee required by section 22A:2-6 of this Title.

Recording of judgment in the civil judgment and order docket, \$25.00 shall be paid to the clerk for use by the State, except as provided in subsection b. of this section.

Docketing judgments or orders from other courts or divisions, including Chancery Division judgments, \$25.00 shall be paid to the clerk for use by the State, except as provided in subsection b. of this section.

Satisfaction of judgment or other lien, \$5.00.

Recording assignment of judgment or release, \$5.00.

Issuing of executions and recording same, except as otherwise provided in this article, \$5.00.

Recording of instruments not otherwise provided for in this article, \$5.00.

Filing and entering recognizance of civil bail, \$5.00.

Signing and issuing subpoena, \$5.00.

b. Moneys collected under the provisions of subsection a. of this section for the recording and docketing of judgments shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the moneys collected under the provisions of subsection a. shall be for use by the State.

12. N.J.S.22A:2-27 is amended to read as follows:

Fees on appeals to Law Division of Superior Court; use.

22A:2-27. In cases appealed to the Law Division of the Superior Court from any inferior court or tribunal, criminal or civil, the clerk of the division shall charge a fee of \$75.00 for filing a notice of appeal, appeal papers and proceedings, including judgment in the Superior Court or order of dismissal. The clerk shall pay this \$75.00 to the treasurer of the county in which the appeal is taken for the use by the county. After December 31, 1994, this \$75.00 fee shall be paid to the clerk, for use by the State.

13. 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. 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.....	\$12.00
Each additional defendant	\$2.00
(2) Filing of complaint in tenancy, one defendant.....	\$15.00
Each additional defendant.....	\$2.00
(3) (a) Filing of complaint, 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 \$1,000.00	\$38.00
Each additional defendant	\$2.00
(b) Filing of complaint, 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 \$1,000.00.....	\$22.00
Each additional defendant	\$2.00
(4) Filing of answer in all matters except small claims	\$7.00
(5) Service of Process:	
Summons by mail, each defendant.....	\$3.00
Summons by mail, each defendant at place of business or employment with postal instructions to deliver to addressee only, additional fee.....	\$3.00
Reservice of summons by mail, each defendant	\$3.00
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 Director of the Division of Motor Vehicles	\$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 or out, by the most direct route from the place where process is issued, at the same rate per mile set by the county governing body for other county 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. Except as provided in subsection c., the clerk shall pay over to the treasurer of the county in which the action is filed all fees collected pursuant to this section. After December 31, 1994, the clerk shall pay over to the State all fees collected pursuant to this section, including the entire fee collected pursuant to paragraph (3) of subsection a.

c. From July 1, 1991 to June 30, 1993, the clerk shall pay over to the treasurer of the county in which the action is filed \$12.00 of each fee paid to the clerk pursuant to paragraph (3) of subsection a., with the balance made available for use by the State.

14. N.J.S.2C:36A-1 is amended to read as follows:

Conditional discharge for certain first offenses; expunging of records.

2C:36A-1. Conditional discharge for certain first offenses; expunging of records. a. Whenever any person who has not previously been convicted of any offense under section 20 of P.L.1970, c.226 (C.24:21-20), or a disorderly persons or petty disorderly persons offense defined in chapter 35 or 36 of this title or, subsequent to the effective date of this title, under any law of the United States, this State or any other state relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any disorderly persons offense or petty disorderly persons offense under chapter 35 or 36 of this title, the court upon

notice to the prosecutor and subject to subsection c. of this section, may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of the person after reference to the State Bureau of Identification criminal history record information files, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of the person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of three years. If a person is placed under supervisory treatment under this section after a plea of guilty or finding of guilt, the court as a term and condition of supervisory treatment shall suspend the person's driving privileges for a period to be fixed by the court at not less than six months or more than two years. In the case of a person who at the time of placement under supervisory treatment under this section is less than 17 years of age, the period of suspension of driving privileges authorized herein, including a suspension of the privilege of operating a motorized bicycle, shall commence on the day the person is placed on supervisory treatment 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 a person is under revocation, suspension, or postponement for a violation of this title or Title 39 of the Revised Statutes at the time of the person's placement on supervisory treatment under this section, the revocation, suspension or postponement period imposed herein shall commence as of the date of the termination of the existing revocation, suspension or postponement. The court which places a person on supervisory treatment under this section shall collect and forward the person's driver's license to the Division of Motor Vehicles and file an appropriate report with the division in accordance with the procedure set forth in N.J.S.2C:35-16. The court shall also

inform the person of the penalties for operating a motor vehicle during the period of license suspension or postponement as required in N.J.S.2C:35-16.

Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilty or finding of guilty, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court to the State Bureau of Identification criminal history record information files. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of P.L.1970, c.226 (C.24:21-29), chapter 35 or 36 of this title or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

(1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or

(2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest; and

(3) The person has not previously received supervisory treatment under section 27 of P.L.1970, c.226 (C.24:21-27), N.J.S.2C:43-12, or the provisions of this chapter.

d. A person seeking conditional discharge pursuant to this section shall pay to the court a fee of \$75.00. The court shall forward all money collected under this subsection to the treasurer of the county in which the court is located. This money shall be used to defray the cost of juror compensation within that county. A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey. Of the moneys collected under this subsection, \$30.00 of

each fee shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the \$75.00 fee shall be paid to the court, for use by the State.

15. N.J.S.2C:43-13 is amended to read as follows:

Supervisory treatment procedure.

2C:43-13. Supervisory Treatment Procedure a. Agreement. The terms and duration of the supervisory treatment shall be set forth in writing, signed by the prosecutor and agreed to and signed by the participant. Payment of the assessment required by section 2 of P.L.1979, c.396 (C.2C:43-3.1) shall be included as a term of the agreement. If the participant is represented by counsel, defense counsel shall also sign the agreement. Each order of supervisory treatment shall be filed with the county clerk.

b. Charges. During a period of supervisory treatment the charge or charges on which the participant is undergoing supervisory treatment shall be held in an inactive status pending termination of the supervisory treatment pursuant to subsection d. or e. of this section.

c. Period of treatment. Supervisory treatment may be for such period, as determined by the designated judge or the assignment judge, not to exceed three years, provided, however, that the period of supervisory treatment may be shortened or terminated as the program director may determine with the consent of the prosecutor and the approval of the court.

d. Dismissal. Upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice.

e. Violation of conditions. Upon violation of the conditions of supervisory treatment, the court shall determine, after summary hearing, whether said violation warrants the participant's dismissal from the supervisory treatment program or modification of the conditions of continued participation in that or another supervisory treatment program. Upon dismissal of the participant from the supervisory treatment program, the charges against the participant may be reactivated and the prosecutor may proceed as though no supervisory treatment had been commenced.

f. Evidence. No statement or other disclosure by a participant undergoing supervisory treatment made or disclosed to the person designated to provide such supervisory treatment shall be disclosed, at any time, to the prosecutor in connection with the

charge or charges against the participant, nor shall any such statement or disclosure be admitted as evidence in any civil or criminal proceeding against the participant. Nothing provided herein, however, shall prevent the person providing supervisory treatment from informing the prosecutor, or the court, upon request or otherwise as to whether or not the participant is satisfactorily responding to supervisory treatment.

g. Delay. No participant agreeing to undergo supervisory treatment shall be permitted to complain of a lack of speedy trial for any delay caused by the commencement of supervisory treatment.

A person applying for admission to a program of supervisory treatment shall pay to the court a fee of \$75.00. The court shall forward all money collected under this subsection to the treasurer of the county in which the court is located. This money shall be used to defray the cost of juror compensation within that county. A person may apply for a waiver of this fee, by reason of poverty, pursuant to the Rules Governing the Courts of the State of New Jersey. Of the moneys collected under this subsection, \$30.00 of each application fee shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275. After December 31, 1994, the \$75.00 fee shall be paid to the court, for use by the State.

16. N.J.S.2C:45-1 is amended to read as follows:

Conditions of suspension or probation.

2C:45-1. Conditions of Suspension or Probation.

a. When the court suspends the imposition of sentence on a person who has been convicted of an offense or sentences him to be placed on probation, it shall attach such reasonable conditions, authorized by this section, as it deems necessary to insure that he will lead a law-abiding life or is likely to assist him to do so. These conditions may be set forth in a set of standardized conditions promulgated by the county probation department and approved by the court.

b. The court, as a condition of its order, may require the defendant:

- (1) To support his dependents and meet his family responsibilities;
- (2) To find and continue in gainful employment;
- (3) To undergo available medical or psychiatric treatment and to enter and remain in a specified institution, when required for that purpose;
- (4) To pursue a prescribed secular course of study or vocational training;

(5) To attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

(6) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(7) Not to have in his possession any firearm or other dangerous weapon unless granted written permission;

(8) (Deleted by amendment, P.L.1991, c.329);

(9) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;

(10) To report as directed to the court or the probation officer, to permit the officer to visit his home, and to answer all reasonable inquiries by the probation officer;

(11) To pay a fine;

(12) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience;

(13) To require the performance of community-related service.

c. The court, as a condition of its order, shall require the defendant to pay any assessments required by section 2 of P.L.1979, c.396 (C.2C:43-3.1) and shall, consistent with the applicable provisions of N.J.S.2C:43-3, N.J.S.2C:43-4 and N.J.S.2C:44-2 or section 1 of P.L.1983, c.411 (C.2C:43-2.1) require the defendant to make restitution.

d. In addition to any condition imposed pursuant to subsection b. or c., the court shall order a person placed on probation to pay a fee, not exceeding \$25.00 per month for the probationary term, to probation services for use by the State, except as provided in subsection g. of this section. This fee may be waived in cases of indigency upon application by the chief probation officer to the sentencing court.

e. When the court sentences a person who has been convicted of a crime to be placed on probation, it may require him to serve a term of imprisonment not exceeding 364 days as an additional condition of its order. When the court sentences a person convicted of a disorderly persons offense to be placed on probation, it may require him to serve a term of imprisonment not exceeding 90 days as an additional condition of its order. In imposing a term of imprisonment pursuant to this subsection, the sentencing court shall specifically place on the record the reasons which justify the sentence imposed. The term of imprisonment imposed hereunder shall be treated as part of the sentence, and in the event of a sentence of imprisonment upon the revocation of probation, the term

of imprisonment served hereunder shall be credited toward service of such subsequent sentence. A term of imprisonment imposed under this section shall be governed by the "Parole Act of 1979," P.L.1979, c.441 (C.30:4-123.45 et al.).

Whenever a person is serving a term of parole as a result of a sentence of incarceration imposed as a condition of probation, supervision over that person shall be maintained pursuant to the provisions of the law governing parole. Upon termination of the period of parole supervision provided by law, the county probation department shall assume responsibility for supervision of the person under sentence of probation. Nothing contained in this section shall prevent the sentencing court from at any time proceeding under the provisions of this chapter against any person for a violation of probation.

f. The defendant shall be given a copy of the terms of his probation or suspension of sentence and any requirements imposed pursuant to this section, stated with sufficient specificity to enable him to guide himself accordingly. The defendant shall acknowledge, in writing, his receipt of these documents and his consent to their terms.

g. Of the moneys collected under the provisions of subsection d. of this section, \$15.00 of each monthly fee collected before January 1, 1995 shall be deposited in the temporary reserve fund created by section 25 of P.L.1993, c.275, and \$10.00 of each shall be deposited into a "Community Service Supervision Fund" which shall be established by each county. The moneys in the "Community Service Supervision Fund" shall be expended only in accordance with the provisions of State law as shall be enacted to provide for expenditures from this fund for the purpose of supervising and monitoring probationers performing community service to ensure, by whatever means necessary and appropriate, that probationers are performing the community service ordered by the court and that the performance is in the manner and under the terms ordered by the court.

17. N.J.S.2C:46-2 is amended to read as follows:

Consequences of nonpayment; summary collection.

2C:46-2. Consequences of Nonpayment; Summary Collection.

a. When a defendant sentenced to pay an assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), monthly probation fee, fine or to make restitution defaults in the payment

thereof or of any installment, upon the motion of the person authorized by law to collect the payment, the motion of the prosecutor, the motion of the victim entitled to payment of restitution, the motion of the Violent Crimes Compensation Board, the motion of the State or county Office of Victim and Witness Advocacy or upon its own motion, the court shall recall him, or issue a summons or a warrant of arrest for his appearance. The court shall afford the person notice and an opportunity to be heard on the issue of default. Failure to make any payment when due shall be considered a default. The standard of proof shall be by a preponderance of the evidence, and the burden of establishing good cause for a default shall be on the person who has defaulted.

(1) If the court finds that the person has defaulted without good cause, the court shall:

(a) Order the suspension of the driver's license or the nonresident reciprocity driving privilege of the person; and

(b) Prohibit the person from obtaining a driver's license or exercising reciprocity driving privileges until the person has made all past due payments; and

(c) Notify the Director of the Division of Motor Vehicles of the action taken.

(2) If the court finds that the person defaulted on payment of a fine without good cause and finds that the default was willful, the court may, in addition to the action required by paragraph a. (1) of this section, impose a term of imprisonment to achieve the objective of the fine. The term of imprisonment in such case shall be specified in the order of commitment. It need not be equated with any particular dollar amount but it shall not exceed one day for each \$20.00 of the fine nor 40 days if the fine was imposed upon conviction of a disorderly persons offense nor 25 days for a petty disorderly persons offense nor one year in any other case, whichever is the shorter period. In no case shall the total period of imprisonment in the case of a disorderly persons offense for both the sentence of imprisonment and for failure to pay a fine exceed six months.

(3) Except where incarceration is ordered pursuant to paragraph a. (2) of this section, if the court finds that the person has defaulted the court shall take appropriate action to modify or establish a reasonable schedule for payment, and, in the case of a fine, if the court finds that the circumstances that warranted the fine have changed or that it would be unjust to require payment, the court may revoke or suspend the fine or the unpaid portion of the fine.

(4) When failure to pay an assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), monthly probation fee or restitution is determined to be willful, the failure to do so shall be considered to be contumacious.

(5) When a fine, assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or restitution is imposed on a corporation, it is the duty of the person or persons authorized to make disbursements from the assets of the corporation or association to pay it from such assets and their failure so to do may be held to be contumacious.

b. Upon any default in the payment of a fine, assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1), monthly probation fee, restitution, or any installment thereof, execution may be levied and such other measures may be taken for collection of it or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt.

c. Upon any default in the payment of restitution or any installment thereof, the victim entitled to the payment may institute summary collection proceedings authorized by subsection b. of this section.

d. Upon any default in the payment of an assessment imposed pursuant to section 2 of P.L.1979, c.396 (C.2C:43-3.1) or any installment thereof, the Violent Crimes Compensation Board or the party responsible for collection may institute summary collection proceedings authorized by subsection b. of this section.

18. Section 3 of P.L.1989, c.296 (C.2A:5A-3) is amended to read as follows:

C.2A:5A-3 County clerk, eligibility to apply for position of deputy clerk of the Superior Court.

3. a. Every county clerk shall be eligible, on January 1, 1995 and for a period up to and including the date the incumbent county clerk must declare candidacy for re-election as county clerk, to apply for the position of deputy clerk of the Superior Court and to resign as county clerk. Any county clerk who applies to become a deputy clerk of the Superior Court as provided herein and who resigns as county clerk shall become a deputy clerk of the Superior Court on the date of his resignation in the county in which he is serving at the time of his resignation.

b. The deputy clerk of the Superior Court shall be an employee of the judiciary and the position of deputy clerk of the Superior

Court shall be included in the budget of the State Judiciary. Any county clerk becoming a deputy clerk of the Superior Court pursuant to this section shall be in the permanent service of the Superior Court with tenure and shall retain any accumulated sick leave, longevity or vacation time that he has earned as county clerk.

C.22A:1-1.1 Payment of juror fees.

19. Every person serving as a juror in New Jersey courts, whether as a grand or petit juror, shall receive, for each day's attendance at such courts, the sum of \$5.00. The Assignment Judge of the vicinage shall designate the method of juror payment.

The Assignment Judge shall keep an account of all juror fees paid under this section and provide each juror with a statement of the number of days the juror served and the amount of fees to which the juror is entitled.

20. The State auditor shall perform a financial audit of all accounts of the county clerk judicial function, including bail, the Special Civil Part of the Superior Court and each county probation department no later than November 1, 1994. The auditor shall report his findings to the Legislature, the Treasurer and the Administrative Office of the Courts by December 1, 1994.

21. R.S.46:30B-74 is amended to read as follows:

Deposits of funds by administrator.

46:30B-74. Deposits of funds by administrator. The administrator shall establish and manage two separate trust funds to be known as the Unclaimed County Deposits Trust Fund and the Unclaimed Personal Property Trust Fund.

a. All moneys received as unclaimed county deposits and the accretions thereon shall be deposited into the Unclaimed County Deposits Trust Fund. Each year, unless the administrator deems it prudent and advisable to do otherwise, the administrator shall pay to each county, within 45 days of the receipt of such funds, 75% of the unclaimed county deposits received from that county by the administrator. The remaining portion shall be retained in the trust fund, administered and invested by the State Treasurer, and used to pay claims duly presented and allowed and all expenses and costs incurred by the State of New Jersey. If the Unclaimed County Deposits Trust Fund is insufficient to pay specific claims against a county, the administrator shall report the fact to the county governing body and the unpaid claim shall become an affirmative obligation of that county.

Upon the effective date of this act, any county deposits paid to the administrator between April 18, 1989 and the effective date of this act shall be transferred from the Unclaimed Personal Property Trust Fund to the Unclaimed County Deposits Trust Fund.

b. All other moneys received as unclaimed property presumed abandoned, the accretions thereon, and the proceeds of sale of unclaimed property shall be deposited into the Unclaimed Personal Property Trust Fund. Unless the administrator deems it prudent and advisable to do otherwise, 75% of all funds received shall be transferred to the General State Fund. The remaining portion shall be retained in the trust fund, administered and invested by the State Treasurer, and used to pay claims duly presented and allowed and all expenses and costs incurred by the State of New Jersey.

Upon the effective date of this act, all funds and assets of the trust funds established pursuant to N.J.S.2A:37-41, section 8 of P.L.1945, c.199 (C.17:9-25), and N.J.S.17B:31-7, shall be transferred to and become part of the Unclaimed Personal Property Trust Fund established by this act, which shall be responsible for payment of any allowed claims for restitution of unclaimed property paid into those three funds.

c. As used in this section, "county deposits" means: the proceeds of a judgment received in favor of a minor and placed under the control of a county surrogate or any devise or distribution from an estate paid into the county surrogate's court prior to April 14, 1989; any unclaimed bail and any interest thereon deposited prior to January 1, 1995 and 50% of any unclaimed bail and any interest thereon deposited after January 1, 1995.

C.2A:162-7.1 Disposition of forfeited bail, interest.

22. a. If any bail deposited with a county clerk prior to January 1, 1995 shall be forfeited such forfeited bail and any interest thereon shall remain with the county.

b. If any bail deposited on or after January 1, 1995 shall be forfeited, 50% of such bail and any interest thereon shall be paid to the county in which the bail was deposited.

Repealer.

23. The following are repealed:

Section 16 of P.L.1991, c.177 (C.2B:6-1.1);

N.J.S.22A:1-1

N.J.S.22A:1-2

N.J.S.22A:1-3.

24. a. There is established in, but not of, the Department of the Treasury, a committee to be known as the "Judicial Unification Transition Committee." The committee shall consist of nine members, each of whom shall be a citizen and resident of this State, as follows: two members appointed by the Chief Justice of the Supreme Court, one member appointed by the Commissioner of the Department of Personnel, one member appointed by the Commissioner of the Department of the Treasury, one member appointed by the President of the Senate, one member appointed by the Senate Minority Leader, one member appointed by the Speaker of the General Assembly, one member appointed by the Assembly Minority Leader and one member appointed by the President of the New Jersey Association of Counties.

Each member of the committee shall serve until the expiration of the committee. The committee shall expire July 1, 1995. Any vacancy during a term shall be filled in the same manner as the original appointment. Any member of the committee may be removed for cause by the appointing authority. The committee shall organize upon appointment of a majority of its members and shall select a chairperson from among its members. The members shall be reimbursed for necessary expenses incurred in the performance of their duties, subject to the availability of funds therefor.

b. The committee shall engage in a review of the transition period of the State's assumption of the judicial system and the implementation of the "State Judicial Unification Act," P.L.1993, c.275 (C.2B:10-1 et seq.). The committee shall:

(1) Assess the implementation of a unified administrative system for the courts;

(2) Assess the adequacy of county collection procedures and record keeping systems related to court revenues and expenditures and make such recommendations with respect to them as appropriate;

(3) Establish standards to be used in the preparation of 1993 base year amount reports to include central, direct and indirect costs of the judiciary;

(4) Consult with the Division of Local Government Services in development and promulgation of forms for reporting of base year amounts;

(5) Receive a preliminary report on base year amounts from the counties for the period ending June 30, 1993, to be submitted to the Administrative Office of the Courts, by August 30, 1993, and a final report for the calendar year to be submitted by February 28, 1994;

(6) As requested by the Chief Justice, the committee will review and comment on the judiciary's long range plan for equalization of programs and staff;

(7) Assess the impact of judicial unification through the State's assumption of the cost of the judicial system on affording significant property tax relief to the citizens of this State.

c. The committee shall have a staff director appointed jointly by the Chief Justice of the Supreme Court, the Governor, the President of the Senate and the Speaker of the General Assembly. The staff director shall be a person qualified by training and experience to assist the committee members in the performance of their duties. The committee shall be entitled to call to its assistance and avail itself of the services of employees of the Department of the Treasury, the Department of Personnel, and the Administrative Office of the Courts as may be available to it for its purposes, and incur traveling and other miscellaneous expenses as it may deem necessary, in order to perform its duties, and as are within the limits of funds appropriated or otherwise made available to it for its purposes.

The committee may make use of existing studies, surveys, data and other materials in the possession of any State agency, or any county government.

d. The committee shall report its findings and recommendations to the Governor, the Judiciary and the Legislature by July 1, 1995 accompanying the same with such recommendations for further legislation for adoption by the Legislature as it may find appropriate.

25. There shall be established in each county a temporary reserve fund entitled "County Purposes Tax Relief Fund." All moneys deposited in such fund pursuant to law prior to January 1, 1995, shall be used solely and exclusively by the county to reduce the amount required to be raised for county purposes by local property tax levy in the county budget year subsequent to the year in which they are collected. The Director of the Division of Local Government Services in the Department of Community Affairs shall certify that each county has complied with this section. If the director finds that moneys in the fund have not been used by a county solely and exclusively to reduce the amount required to be raised for county purposes by local property tax levy, the director shall direct that the county governing body make corrections to its budget.

26. Sections 1 through 9 and sections 18 through 25 shall take effect immediately, sections 10 through 17 of this act shall take effect on the 30th day after enactment.

Approved December 6, 1993.

CHAPTER 276

AN ACT concerning autopsy and tissue or organ analysis and supplementing Title 52 of the Revised Statutes.

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

C.52:17B-88.7 Procedures performed on anatomical gift, time, manner.

1. Notwithstanding any provision of law to the contrary, if a deceased person whose death is under investigation pursuant to section 9 of P.L.1967, c.234 (C.52:17B-86) is a donor of all or part of his body as evidenced by an advance directive, will, card or other document, or as otherwise provided in the "Uniform Anatomical Gift Act," P.L.1969, c.161 (C.26:6-57 et seq.), the State Medical Examiner or the county medical examiner, or his designee, who has notice of the donation shall perform an examination, autopsy or analysis of tissues or organs only in a manner and within a time period compatible with their preservation for the purposes of transplantation.

C.52:17B-88.8 Removal of anatomical gift from donor whose death is under investigation.

2. A health care professional authorized to remove an anatomical gift from a donor whose death is under investigation pursuant to section 9 of P.L.1967, c.234 (C.52:17B-86), may remove the donated part from the donor's body for acceptance by a person authorized to become a donee, after giving notice to the State Medical Examiner or the county medical examiner, or his designee, if the examination, autopsy or analysis has not been undertaken in the manner and within the time provided in section 1 of this act. The State Medical Examiner or the county medical examiner, or his designee shall be present during removal of the anatomical gift if in his judgment those tissues or organs may be involved in the cause of death. In that case, the State Medical Examiner or the

county medical examiner, or his designee, may request a biopsy of those tissues or organs or deny removal of the anatomical gift. The State Medical Examiner or the county medical examiner, or his designee, shall explain in writing his reasons for determining that those tissues or organs may be involved in the cause of death and shall include the explanation in the records maintained pursuant to section 15 of P.L.1967, c.234 (C.52:17B-92).

C.52:17B-88.9 Report on condition of anatomical gift.

3. The health care professional performing a transplant from a donor whose death is under investigation pursuant to section 9 of P.L.1967, c.234 (C.52:17B-86) shall file with the State Medical Examiner a report detailing the condition of the part of the body that is the anatomical gift and its relationship to the cause of death. If appropriate, the report shall include a biopsy or medically approved sample from the anatomical gift. The report shall become part of the Medical Examiner's report.

4. This act shall take effect immediately.

Approved December 13, 1993.

CHAPTER 277

AN ACT concerning the issuance of handicapped license plates and amending P.L.1949, c.280.

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

1. Section 3 of P.L.1949, c.280 (C.39:4-206) is amended to read as follows:

C.39:4-206 Vehicle identification card.

3. The director shall issue to such applicant, also, a placard of such size and design as shall be determined by the director in consultation with the Division of Vocational Rehabilitation Services in the Department of Labor, indicating that a handicapped person identification card has been issued to the person designated therein, which shall be displayed in such manner as the director shall determine on the motor vehicle used to transport the handicapped person, when the vehicle is parked overtime or in special parking places established for use by handicapped persons.

Notwithstanding any provision of this act to the contrary, the chief of police of each municipality in this State shall issue to any person who has temporarily lost the use of one or more limbs or is temporarily disabled as to be unable to ambulate without the aid of an assisting device or whose mobility is otherwise temporarily limited, as certified by a physician with a plenary license to practice medicine and surgery or a podiatrist licensed to practice in this State or a bordering state, a temporary placard of not more than six months' duration. Each temporary handicapped placard issued under the provisions of this section shall set forth the date on which it shall become invalid.

The temporary placard shall be granted upon written certification by a physician with a plenary license to practice medicine and surgery or a podiatrist licensed to practice in this State or a bordering state that the person meets the conditions constituting temporary disability as provided in this section. This certification shall be provided on a standard form to be developed by the director in consultation with local chiefs of police and representatives of the handicapped. The form shall contain only those conditions constituting temporary disability as are provided in this section. The physical presence of the handicapped person shall not be required for the issuance of a temporary handicapped placard.

The placard may be renewed one time at the discretion of the issuing authority for a period of not more than six months' duration. The placard shall be displayed on the motor vehicle used by the temporarily handicapped person and shall give the person the right to park overtime or to use special parking places established for use by handicapped persons in any municipality of this State.

The fee for the issuance of such temporary or permanent placard issued pursuant to this section shall be \$4.00 and payable to the Director of the Division of Motor Vehicles.

The director may, in addition, issue license plates bearing the national wheelchair symbol for:

- a. Not more than two motor vehicles owned, operated or leased by a handicapped person or by any person furnishing transportation on his behalf; or
- b. Any two motorcycles owned, operated or leased by a handicapped person.

The fee for the issuance of such plates shall be \$10.00 for each vehicle.

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

Approved December 15, 1993.

CHAPTER 278

AN ACT concerning certain in rem tax foreclosure costs and amending P.L.1948, c.96.

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

1. Section 31 of P.L.1948, c.96 (C.54:5-104.59) is amended to read as follows:

C.54:5-104.59 Apportionment, allocation, definition of costs and fees.

31. a. All costs and fees in the action shall be equitably apportioned and allocated to the several parcels of land affected by the action, and added to the amount required to redeem.

b. For the purposes of this section "all costs and fees" includes all costs incurred for a standard title search and all reasonable attorney fees incurred in the action.

2. This act shall take effect immediately.

Approved December 15, 1993.

CHAPTER 279

AN ACT concerning the membership of the State Board of Medical Examiners and amending R.S.45:9-1.

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

1. R.S.45:9-1 is amended to read as follows:

State Board of Medical Examiners; advisory committee.

45:9-1. The State Board of Medical Examiners, hereinafter in this chapter designated as the "board" shall consist of 21 members, one of whom shall be the Commissioner of Health, or his designee, three of whom shall be public members and one an executive department designee as required pursuant to section 2 of P.L.1971, c.60 (C.45:1-2.2), and 16 of whom shall be persons of recognized professional ability and honor, and shall possess a

license to practice their respective professions in New Jersey, and all of whom shall be appointed by the Governor in accordance with the provisions of section 2 of P.L.1971, c.60 (C.45:1-2.2); provided, however, that said board shall consist of 12 graduates of schools of medicine or osteopathic medicine who shall possess the degree of M.D. or D.O. The number of osteopathic physicians on the board shall be a minimum of, but not limited to, two members. In addition the membership of said board shall comprise one podiatrist, one physician assistant, one certified nurse midwife and one licensed bio-analytical laboratory director, who may or may not be the holder of a degree of M.D. The term of office of members of the board hereafter appointed shall be three years or until their successors are appointed. Said appointees shall, within 30 days after receipt of their respective commissions, take and subscribe the oath or affirmation prescribed by law and file the same in the office of the Secretary of State.

The Governor shall also appoint an advisory committee to consist of four licensed bio-analytical laboratory directors, only two of whom shall possess the degree of M.D. or D.O., and who shall be appointed from a list to be submitted by the society or organization of which the persons nominated are members. The members of this advisory committee shall serve for a term of three years and until their successors are appointed and qualified, and shall be available to assist the board in the administration of the "Bio-analytical Laboratory and Laboratory Directors Act (1953)," P.L.1953, c.420 (C.45:9-42.1 et al.). The advisory committee shall meet at the call of the board. The board may authorize reimbursement of the members of the advisory committee for their actual expenses incurred in connection with the performance of their duties as members of the committee.

2. This act shall take effect immediately.

Approved December 15, 1993.

CHAPTER 280

AN ACT concerning credit unions and amending P.L.1984, c.171.

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

1. Section 22 of P.L.1984, c.171 (C.17:13-100) is amended to read as follows:

C.17:13-100 Credit committee.

22. a. If the bylaws provide for a credit committee, then pursuant to the provisions of the bylaws, the board shall appoint, or the members shall elect a credit committee of not less than three nor more than seven members, who shall serve as set forth in the bylaws. The committee shall approve or deny written applications for loans from members pursuant to and consistent with the general loan policy and rules and regulations established by the board for member loans.

The credit committee shall elect a chairman and a secretary and any other officers which it deems necessary. It shall be the duty of the secretary of the credit committee to keep permanent minutes of all of its meetings.

b. A majority of members of the credit committee shall constitute a quorum. No member loans shall be approved except at meetings of the credit committee, and the approval shall be signed by a majority of those members present.

c. If the bylaws provide for a credit committee, the credit committee may appoint one or more loan officers, to whom it may delegate the power to approve applications for loans from members pursuant to and consistent with the general loan policy and rules and regulations established by the board for member loans. Each loan officer shall submit to the credit committee a record of each application approved or denied by him, at the next meeting of the credit union or within 30 days of the receipt of the loan application, whichever is earlier. All applications denied by a loan officer shall be reviewed by the credit committee. No person shall have the authority to disburse funds for any loan which has been approved by him as loan officer. Not more than one member of the credit committee may be appointed as loan officer.

d. If there is no credit committee, a member shall have the right, upon written request to the board of directors, to review by the board of a loan application which has been denied by a loan officer.

2. This act shall take effect immediately.

Approved December 15, 1993.

CHAPTER 281

AN ACT concerning guardianship, supplementing Title 38A of the New Jersey Statutes, and making an appropriation.

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

C.38A:3-2b2 Establishment of program to appoint guardians for certain veterans.

1. There is established in the Division of Veterans' Administrative Services in the Department of Military and Veterans' Affairs a program to assist an eligible family member of a veteran who is already in a New Jersey veterans' memorial home or an eligible family member of a veteran who is about to enter such a home in being appointed as guardian of the veteran. In the event that a family member of a veteran who is already in a New Jersey veterans' memorial home or is about to enter such a home is not willing or available to serve as guardian of that veteran, some other interested person closely associated with the veteran shall be eligible for assistance in being appointed as guardian under the program herein established. The assistance provided to a family member of a veteran or to some other interested and eligible person associated with a veteran shall be in the form of both technical and financial support.

C.38A:3-2b3 Duties of Adjutant General.

2. The Adjutant General of the Department of Military and Veterans' Affairs shall:

- a. develop economic criteria for determining eligibility for financial assistance pursuant to the program established by this act; and
- b. promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to implement the provisions of this act.

3. There is appropriated from the General Fund \$50,000.00 to the Department of Military and Veterans' Affairs to effectuate the purposes of this act.

4. This act shall take effect immediately.

Approved December 15, 1993.

CHAPTER 282

AN ACT concerning interest on security deposits held by residential health care facilities and supplementing P.L.1971, c.136 (C.26:2H-1 et seq.).

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

C.26:2H-14.5 Requirements for handling of security deposits paid to residential health care facility.

1. If a residential health care facility requires a security deposit advanced prior to the admission of a person to the residential health care facility, the money or other form of security, until repaid or applied to payments in accordance with the terms of the contract or agreement, including the resident's portion of the interest or earnings accumulated thereon as hereinafter provided, shall continue to be the property of the resident and shall be held in trust by the residential health care facility and shall not be mingled with the personal property or become an asset of the residential health care facility, except as provided in section 2 of this act.

a. The residential health care facility shall: (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. § 80a-1 et seq.) whose shares are registered under the "Securities Act of 1933," 48 Stat. 74 (15 U.S.C. § 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, less an amount not to exceed 1% per annum of the amount so invested or deposited for the costs of servicing and processing the accounts.

b. Immediately after the security money is invested, the residential health care facility shall notify the resident in writing of 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, and the amount of the deposit.

c. All of the money so deposited or advanced may be deposited or invested by the residential health care facility in one interest-bearing or dividend yielding account as long as the residential health care facility complies with all the other requirements of this act.

d. The residential health care facility is entitled to receive as administration expenses, a sum equivalent to 1% per annum thereon or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, less the amount of any service fee charged by an investment company, a State or federally chartered bank, savings bank or savings and loan association for money deposited pursuant to this section, which is in lieu of all other administrative and custodial expenses. The balance of 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 resident and shall be permitted to compound to the benefit of the resident, or be paid to the resident in cash, or be credited toward the payments due on the anniversary of the resident's admission to the residential health care facility in accordance with the terms of the contract or agreement.

e. If the residential health care facility fails to notify the resident of 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 the security is made, and the amount thereof, within 30 days after receipt of the money from the resident, the resident may give written notice to the residential health care facility that the security money shall be applied on account of payments due or to become due from the resident, and thereafter the resident shall be without obligation to make any further security deposit and the residential health care facility shall not be entitled to make further demand for a security deposit.

f. Within 60 days after the person is no longer a resident of the residential health care facility, the residential health care facility shall return to the former resident or, if appropriate, to the resident's estate, by personal delivery or by registered or certified mail the sum so deposited plus the former resident's portion of the interest or earnings accumulated thereon, less any charges expended in accordance with the terms of a contract or agreement. The interest or earnings and any such deductions shall be itemized and the resi-

dent or, if appropriate, the resident's estate, notified thereof by personal delivery or by registered or certified mail.

g. The Commissioner of Banking may promulgate rules and regulations with respect to the establishment of the method of computing the interest due to either the residential health care facility or to the resident pursuant to the provisions of this act in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) if the money is deposited in an account or in shares of an investment company upon which the interest varies on a periodic basis.

C.26:2H-14.6 Commingling of security deposits, conditions.

2. A residential health care facility shall not be required to segregate a security deposit held on behalf of a resident on the effective date of this act from other funds used to operate the facility if the facility complies with the requirements set forth in subsections a. through c. of this section.

a. The residential health care facility shall pay the resident interest on the security deposit equal to the average rate of interest paid by State or federally chartered banks, savings banks or savings and loan associations located in the municipality in which the residential health care facility is located and 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 a bank or association, less an amount not to exceed 1% per annum of the security deposit for the cost of servicing the security deposit account. The residential health care facility shall obtain the interest rate to be paid on the security deposit at least quarterly by contacting at least three banks or associations in the municipality in which the facility is located, and shall document each call with the name of the bank or association called, the person contacted at the bank or association, the rate of interest quoted and the type of account to which the interest rate applies.

b. The residential health care facility shall notify the resident in writing that the facility will be holding the security deposit, the amount of the security deposit and the initial interest rate to be paid on the deposit. If the residential health care facility fails to so notify the resident in writing within 30 days after the effective date of this act, the resident may give written notice to the residential health care facility that the security money shall be applied on

account of payments due or to become due from the resident, and thereafter the resident shall be without obligation to make any further security deposit and the residential health care facility shall not be entitled to make further demand for a security deposit.

c. The residential health care facility is entitled to receive as administration expenses, a sum equivalent to 1% per annum thereon or 12.5% of the aggregate interest yield on the security deposit, whichever is greater, which is in lieu of all other administrative and custodial expenses associated with the resident's security deposit account. The balance of the interest or earnings paid to the account shall belong to the resident and shall be permitted to compound to the benefit of the resident, or be paid to the resident in cash, or be credited toward the payments due on the anniversary of the resident's admission to the residential health care facility in accordance with the terms of the contract or agreement. The residential health care facility shall provide the resident with a quarterly statement of his security deposit account showing the security deposit balance, the interest rate paid on the security deposit, the amount of interest earned and any deductions made from the account.

C.26:2H-14.7 Violations; cause of action.

3. A person shall have a cause of action against the residential health care facility for any violation of this act. The Department of Health may maintain an action in the name of the State to enforce the provisions of this act and any rules and regulations promulgated pursuant to this act. The action to recover actual and punitive damages shall be brought in a court of competent jurisdiction. A plaintiff who prevails in an action shall be entitled to recover reasonable attorney's fees and costs of the action.

4. This act shall take effect on the first day of the sixth month following enactment and apply to all money or other forms of security held by a residential health care facility on behalf of a resident on the effective date of this act.

Approved December 15, 1993.

CHAPTER 283

AN ACT concerning improvements at certain youth correctional facilities and supplementing chapter 1B of Title 30 of the Revised Statutes.

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

C.30:1B-33 Authorization for transfer of certain juvenile facilities to Department of Human Services.

1. Notwithstanding the transfer of the Division of Juvenile Services in the Department of Corrections to the Department of Human Services pursuant to Reorganization Plan No. 001-1993 transmitted to the President of the Senate and the Speaker of the General Assembly pursuant to P.L.1969, c.203 (C.52:14C-1 et seq.), the New Jersey Training School for Boys (hereinafter "Jamesburg") and the Juvenile Medium Security Center (hereinafter "Bordentown") shall not be transferred from the Department of Corrections to the Department of Human Services unless the transfer of these facilities is separately authorized by:

- a. legislation passed by the Legislature and signed by the Governor;
- b. an executive order of the Governor approved by concurrent resolution of both Houses of the Legislature; or
- c. a reorganization plan transmitted by the Governor and not disapproved by the Legislature pursuant to P.L.1969, c.203 (C.52:14C-1 et seq.).

C.30:1B-34 Management, administration of facilities prior to transfer.

2. Unless and until the transfer of Jamesburg and Bordentown is effectuated as provided in section 1 of this act, these facilities shall be managed and administered as follows:

a. The Department of Corrections shall be responsible for the day to day operation and management of the facilities and shall, through corrections officers and other Department of Corrections personnel, provide for security at the facilities.

b. The Department of Corrections shall continue to administer and provide the educational, remedial and rehabilitative programs which it presently offers inmates at the facilities. The Department of Human Services may supplement these programs by administering and providing other educational, remedial and rehabilitative programs for inmates at the facilities subject to and consistent with security and facility operational requirements and procedures established by the Department of Corrections.

c. The Department of Corrections shall have the authority and responsibility to transfer inmates presenting security or disciplinary problems from Jamesburg and Bordentown to other secure juvenile or adult institutions. Aside from such security or disciplinary problems at the facilities, the Department of Human

Services shall have the authority and responsibility for the assignment of inmates to the facilities and the reassignment of inmates from the facilities to other institutions or facilities operated by the Division of Juvenile Services.

d. The Departments of Corrections and Human Services shall jointly be responsible for planning and overseeing any capital improvements including, but not limited to, those involving security at the facilities and for the rehabilitation of the facilities.

C.30:1B-35 Formulation, implementation of plan for physical rehabilitation, enhanced security.

3. The Commissioners of Corrections and Human Services are hereby directed to formulate and implement a plan for the physical rehabilitation of Jamesburg and for enhanced security there; and to take forthwith any and all immediate steps which may be necessary to insure adequate security is in place at Jamesburg and to improve inmate living conditions.

C.30:1B-36 Development, definition of operating procedures necessary.

4. The Commissioners of Corrections and Human Services by memorandum of understanding shall develop and define operating procedures necessary to effectuate the provisions of sections 2 and 3 of this act.

C.30:1B-37 Allocation of furnishings, equipment, capital, personnel.

5. a. Furnishings, equipment, capital, personnel (including, without limitation, administrative and support staff) and other resources necessary to accomplish the purposes of this act shall be allocated between the Departments of Corrections and Human Services as the Commissioners of Corrections and Human Services shall specify and agree by memorandum of understanding.

b. Provisions of any reorganization plan pertaining to the option of Department of Corrections employees who work at Jamesburg or Bordentown to remain in the Department of Corrections shall not be operative until a transfer of Jamesburg and Bordentown is implemented pursuant to section 1 of this act.

C.30:1B-38 Report to Governor, Legislature.

6. On the first day of the 16th month following the transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Services pursuant to Reorganization Plan No. 001-1993, the Jamesburg Board of Trustees and the Advisory Council on Juvenile Justice created pursuant to the plan, after consulting with the Commissioners of

Corrections and Human Services, shall submit a report to the Governor and the Legislature. This report shall comment upon and evaluate the operation of the facilities pursuant to this act and make recommendations for future management of the facilities.

7. This act shall take effect immediately.

Approved December 15, 1993.

CHAPTER 284

AN ACT concerning recycling facilities, and appropriating moneys from the "Resource Recovery and Solid Waste Disposal Facility Fund."

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

1. There is appropriated to the Department of Environmental Protection from the "Resource Recovery and Solid Waste Disposal Facility Fund" established pursuant to section 14 of the "Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985," P.L.1985, c.330, the sum of \$7,500,000 for the purpose of providing a zero-interest State loan to the following local government unit to finance the construction of (1) an environmentally sound sanitary landfill facility; (2) a solid waste composting resource recovery facility; and (3) a resource recovery facility for the recovery and recycling of recyclable materials as follows:

Atlantic County Utilities Authority	\$7,500,000

2. Repayment of the loan made pursuant to this act shall be made to the "Resource Recovery and Solid Waste Disposal Facility Fund" in accordance with the terms of a written loan agreement. The form of the loan agreement shall be specified by the State Treasurer.

3. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1985, c.330.

4. This act shall take effect immediately.

Approved December 16, 1993.

CHAPTER 285

AN ACT concerning solid waste disposal facilities, and appropriating moneys from the "Resource Recovery and Solid Waste Disposal Facility Fund."

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

1. There is appropriated to the Department of Environmental Protection from the "Resource Recovery and Solid Waste Disposal Facility Fund" established pursuant to section 14 of the "Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985," P.L.1985, c.330, the sum of \$15,000,000 for the purpose of providing a zero-interest State loan to the following local government unit to finance the construction of a materials recovery and solid waste composting resource recovery facility as follows:

Cape May County Municipal	
Utilities Authority	\$15,000,000

2. Repayment of the loan made pursuant to this act shall be made to the "Resource Recovery and Solid Waste Disposal Facility Fund" in accordance with the terms of a written loan agreement. The form of the loan agreement shall be specified by the State Treasurer.

3. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1985, c.330.

4. This act shall take effect immediately.

Approved December 16, 1993.

CHAPTER 286

AN ACT concerning loans for the cleanup of hazardous discharges, amending P.L.1992, c.16, and making an appropriation.

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

1. Section 4 of P.L.1992, c.16 (C.34:1B-7.13) is amended to read as follows:

C.34:1B-7.13 Use of moneys in fund.

4. The authority may use the moneys in the fund to pay principal of, premium, if any, and interest on bonds or notes, which shall be entitled "Economic Recovery Fund Bonds or Notes," as appropriate, the proceeds, or net proceeds, of which shall be deposited into the fund, or used for purposes of the fund, and moneys in the fund, including money received from the sale of bonds shall, in such manner as is determined by the authority, and pursuant to subsections d., e., and f. of this section, be used for the financing of projects as set forth in section 3 of P.L.1974, c.80 (C.34:1B-3) and to establish:

a. an economic growth account for business programs, which will invest in small and medium-size businesses that have the greatest potential for creating jobs and stimulating economic growth through such elements as a Statewide lending pool for small business, a business composite bond guarantee, a fund to further supplement the export finance program of the authority to provide direct loans and working capital necessary for New Jersey businesses to compete in the global market, real estate partnerships, a Statewide composite bond pool to assist municipalities in acquiring needed financing for capital expenditures, community-based assistance to assist municipalities in establishing local development corporations to stimulate economic development, a venture capital fund for start-up costs for businesses developing new concepts and inventions, and a fund to assist businesses with expansion in such areas as manufacturing retooling to improve quality, to reduce production costs and to train employees to apply the latest technology;

b. an economic development infrastructure program account, which shall provide for the financing and development of infrastructure and transportation projects, including but not limited to ports, terminal and transit facilities, roads and airports, parking facilities used in connection with transit facilities, and related facilities, including public-private partnerships, that are integral to economic growth;

c. an account for a cultural, recreational, fine and performing arts, military and veterans memorial, historic preservation project and tourism facilities and improvements program, which shall provide for the financing and development of cultural, recre-

ational, fine and performing arts, military and veterans memorial, historic preservation and tourism projects, including partnerships with public, private and nonprofit entities;

d. an account, into which shall be deposited an amount not less than \$45,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, for the financing of capital facilities for primary and secondary schools in the State for the purpose of the renovation, repair or alteration of existing school buildings, the construction of new school buildings or the conversion of existing school buildings to other instructional purposes.

(1) Of the amount deposited in the account, not less than \$25,000,000 shall be deposited in the "Public School Facilities Code Compliance Loan Fund" established pursuant to section 4 of P.L.1993, c.102 (C.34:1B-7.23).

(2) Of the amount deposited in the account, not less than \$20,000,000 shall be deposited in the "Public School Facilities Loan Assistance Fund" established pursuant to section 5 of P.L.1993, c.102 (C.34:1B-7.24);

e. an environmental cleanup assistance account, into which shall be deposited an amount not less than \$10,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, to provide financial assistance to the persons and other entities entitled to apply for financial assistance pursuant to P.L.1993, c.139; and

f. an account, into which shall be deposited an amount not less than \$15,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, for the financing of shore restoration, maintenance, monitoring, protection and preservation projects pursuant to the shore protection master plan prepared by the Department of Environmental Protection pursuant to P.L.1978, c.157.

2. There is appropriated from the environmental cleanup assistance account, created pursuant to subsection e. of section 4 of P.L.1992, c.16 (C.34:1B-7.13), the sum of \$10,000,000 to the "Hazardous Discharge Site Remediation Fund" created pursuant to section 26 of P.L.1993, c.139 (C.58:10B-4), for the purposes of that fund.

3. This act shall take effect immediately.

Approved December 16, 1993.

CHAPTER 287

AN ACT concerning motor vehicle learner's permits and amending P.L.1977, c.25.

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

1. Section 6 of P.L.1977, c.25 (C.39:3-13.2a) is amended to read as follows:

C.39:3-13.2a Special learner's permit; use, hours.

6. Any person to whom a special learner's permit has been issued pursuant to section 1 of P.L.1950, c.127 (C.39:3-13.1), upon successful completion of a behind-the-wheel driving course conducted by a licensed drivers' school or of a public, parochial or private school driving education course, shall be entitled to retain the special learner's permit in his own possession. Such person may operate a motor vehicle of the class for which a basic driver's license is required except during the hours between 12:01 a.m. and 5:00 a.m. while in the company and under the control of a licensed motor vehicle driver of this State who has had at least three years' experience as a licensed motor vehicle driver. Such special permit shall be valid for 90 days after such person's seventeenth birthday or until the completion of the road test portion of his license examination, whichever period is shorter; provided, however, that a special permit issued to a handicapped person, as determined by the Division of Motor Vehicles after consultation with the Department of Education, shall be valid for nine months after such person's seventeenth birthday or until the completion of the road test portion of his license examination, whichever period is shorter.

2. This act shall take effect immediately.

Approved December 16, 1993.

CHAPTER 288

AN ACT requiring the certification of persons and business firms performing lead evaluation and lead abatement, supplementing Titles 26 and 52 of the Revised Statutes and making an appropriation therefor.

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

C.26:2Q-1 Findings, declarations.

1. The Legislature finds and declares that:

Lead poisoning is the most prevalent environmental health problem facing children in New Jersey today; the Department of Health estimates that over 177,000 children under the age of five in New Jersey are at high risk of lead poisoning, and the effects of lead poisoning in children include learning disabilities, mental retardation, behavioral disorders, hyper-irritability, lack of coordination, loss of appetite, vomiting, abdominal pain, convulsions, permanent brain damage and death; even low levels of lead exposure can cause subtle neurological changes, reduced concentration and attentiveness, reduced I.Q. scores, behavioral problems, and learning disabilities; these problems persist and can adversely affect the child's chances for success in school and life; lead poisoning is caused by environmental exposure to lead and the most significant sources are lead-based paint in older housing and lead-laden dust and soil; and the Department of Health estimates that approximately 65% of New Jersey's housing stock may contain lead-based paint, representing a potential public health hazard of alarming magnitude.

The Legislature further finds and declares that:

Persons performing lead evaluation and lead abatement work must receive appropriate training and certification to ensure that lead evaluations and abatements are reliable, thorough, and safe; persons performing lead evaluation, without proper training, may fail to detect lead-contaminated surfaces; an abatement work plan that is based on an improper evaluation will be inadequate to rid a dwelling of a lead hazard; persons performing lead abatement, without proper training, may cause the contamination of an entire home with dangerous levels of lead; and a certification program for lead abatement is essential to ensure the safety of the occupants and the safety of the workers and is also necessary to protect consumers from fraud, abuse, and shoddy work practices.

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.

"Department" means the Department of Health.

"Lead abatement" means a process designed either to mitigate or to eliminate permanently lead-based paint hazards on a pre-

mises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and 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-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.

“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.

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, 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).

C.26:2Q-4 Development, offering, accreditation of training courses.

4. a. The department shall develop, offer, or accredit training courses which shall be required for certification. These training courses shall include instruction in safe and effective evaluation and abatement methods. The training courses shall be developed in accordance with regulations adopted by the Department of Community Affairs pursuant to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437) and the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

b. The training course for persons performing lead evaluation shall include, but not be limited to, instruction in:

(1) safe and effective techniques and methods to test for lead hazards and assess lead hazards on premises before, during and after abatement of lead hazards;

(2) risk assessment of the dangers posed by lead hazards on a premises and the effectiveness of various abatement techniques

and methods and hazard reduction measures to reduce the risk posed by the presence of lead;

(3) safe work practices, including determining whether occupants must be relocated during lead abatement;

(4) practices to prevent contamination of the premises; and

(5) applicable State and federal requirements.

c. The training course for persons performing lead abatement shall include, but not be limited to, instruction concerning:

(1) safe and effective abatement techniques to remove, cover, encapsulate, or otherwise mitigate lead-based paint and lead-contaminated dust and soil;

(2) possible routes of exposure during abatement of lead hazards;

(3) safe work practices, including determining whether occupants must be relocated during lead abatement;

(4) proper cleanup of lead-contaminated waste generated on the premises during and after lead abatement;

(5) safe and lawful handling, transport and disposal of lead-contaminated waste; and

(6) applicable State and federal requirements.

d. The commissioner is authorized to adopt any applicable federal requirements or guidelines established by federal law, including any requirements or guidelines that apply to homeowners or other property owners, notwithstanding that the requirements or guidelines may be inconsistent with the provisions of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12).

e. The department may establish continuing education requirements for recertification.

f. A person shall not hold himself out as accredited by the department or otherwise represent that he is competent to offer training unless he has been accredited to provide training pursuant to this section.

C.26:2Q-5 Denial, suspension, conditions upon, revocation, refusal to renew certification.

5. a. The department may deny, suspend, impose conditions upon, revoke, or refuse to renew a certification for good cause, including but not limited to, the department's finding that:

(1) a person has obtained a certification based upon a misrepresentation or fraud;

(2) a person performed work without a certification as required in section 3 of P.L.1993, c.288 (C.26:2Q-3);

(3) a person engaged in unsafe work practices, violated the rules promulgated by the Department of Community Affairs pursuant to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437), failed to obtain a permit pursuant to the Uniform Construction Code, N.J.A.C.5:23-1.1 et seq. or acted in a manner which posed a health risk to others;

(4) the quality of the person's performance is below standards set by the department and remedial measures such as consultation and training are not accepted or do not result in improvement to a level of acceptable proficiency;

(5) a person made false reports or reports not based on work done;

(6) a person knowingly authorized or permitted the use of the name of a certified person to an uncertified person;

(7) a person falsely represented his certification credentials; or

(8) a person has violated any provision of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12).

b. An applicant or certificate holder whose application or certification is denied, suspended, conditionally issued, revoked or not renewed is entitled to a hearing pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. Denial of, suspension of, imposition of conditions upon, revocation of, or refusal to renew a certification shall not limit the department from pursuing against the applicant or certificate holder any other lawful remedy available to the department.

d. Any person whose certification has been revoked shall be ineligible to apply for certification for three years from the date of revocation.

C.26:2Q-6 Civil actions for injunctive relief to enforce, prevent violations.

6. If the department has reason to believe that a person who: is not certified pursuant to section 3 of P.L.1993, c.288 (C.26:2Q-3) is engaging in lead evaluation or lead abatement work or is soliciting another person to engage, employ or retain him to perform lead evaluation or lead abatement work, for pecuniary gain; or is either certified or not certified pursuant to section 3 of P.L.1993, c.288 (C.26:2Q-3) and is causing an imminent threat to the public health, safety or welfare, the department may initiate a civil action in a court of competent jurisdiction for injunctive relief to enforce or prevent a violation of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12). The court may proceed in the action in a summary manner.

C.26:2Q-7 Violators guilty of disorderly persons offense.

7. A person who knowingly or purposely:

- a. hinders or delays the department in the enforcement of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12);
 - b. fails to obtain the certification required by section 3 of P.L.1993, c.288 (C.26:2Q-3) and engages in lead evaluation or lead abatement work for pecuniary gain;
 - c. solicits another person to engage, employ or retain him to perform a lead evaluation or lead abatement work, for pecuniary gain, when he is not certified pursuant to section 3 of P.L.1993, c.288 (C.26:2Q-3);
 - d. holds himself out as accredited by the department or otherwise represents that he is competent to offer training when he is not accredited to provide training pursuant to section 4 of P.L.1993, c.288 (C.26:2Q-4); or
 - e. otherwise violates any provision of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12);
- is guilty of a disorderly persons offense.

C.26:2Q-8 Administrative civil penalty; violation defined.

8. As an alternative, or in addition to the provisions of section 7 of P.L.1993, c.288 (C.26:2Q-7), the commissioner may, subject to notice and hearing, impose an administrative civil penalty for a violation set forth in this section not to exceed \$1,000 for the first offense and \$5,000 for each subsequent offense. If the violation is of a continuing nature, each day it continues constitutes an additional and separate violation.

The penalty may be sued for and recovered by and in the name of the commissioner in a civil action in a court of competent jurisdiction by a summary proceeding under "the penalty enforcement law," N.J.S.2A:58-1 et seq. For the purposes of this act, the Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law."

The department may compromise and settle a claim for a penalty under this section in such amount as the department determines to be appropriate and equitable.

As used in this section, a violation shall include the:

- a. obstructing, hindering, delaying or interfering by force or otherwise with the commissioner in the exercise of any power or the discharge of any function or duty pursuant to the provisions of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12);
- b. preparing, uttering or rendering of any false statements, reports, documents, plans or specifications permitted or required

pursuant to sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12); or

c. refusal or failure to comply with a ruling, action, order or notice of the commissioner pursuant to sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12).

C.26:2Q-9 Assessment of fees.

9. The department shall assess fees from persons for certification and recertification and from training providers for any training course or continuing education course that it accredits. The fees shall be used to support the certification and accreditation programs.

C.26:2Q-10 Nonapplicability of act.

10. The provisions of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12) shall not apply to a property owner who personally performs his own lead abatement in a dwelling unit that he occupies as his primary place of residence.

C.26:2Q-11 Enforcement by commissioner, representative.

11. Sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12) shall be enforced by the commissioner or his representative, who shall have the right of entry to all premises at which the department has reason to believe that lead abatement or evaluation activities have taken place or are taking place, or to any premises occupied or used by a business firm subject to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437); and the right to review any records for the purposes of inspection or investigation.

C.26:2Q-12 Rules, regulations.

12. The department, in consultation with the Department of Community Affairs, 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 provisions of sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12).

13. There is appropriated to the Department of Health \$90,000 from the General Fund to establish and implement the certification and training program established pursuant to sections 1 through 12 of P.L.1993, c.288 (C.26:2Q-1 through C.26:2Q-12).

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.

“Lead abatement” means a process designed either to mitigate or to eliminate permanently lead-based paint hazards on a premises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and 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-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.

“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.

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 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 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, 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.

C.52:27D-429 Certification regulations.

16. The certification required pursuant to section 15 of P.L.1993, c.288 (C.52:27D-428) shall be for a period not to exceed two years and shall not be transferable. A business firm 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 business firm applies after the certification expiration date, the firm 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 business firm is required to obtain a new certification.

A copy of the certification shall be conspicuously displayed for public review in the business office of a business firm engaged in the business of abating lead-based paint hazards or conducting lead evaluations. Additionally, the certification number shall be displayed on all business vehicles and at all lead abatement or lead evaluation jobs in progress.

A certification or recertification shall not be issued until a certification fee has been paid in full to the department. The commissioner shall establish application and certification fees by regulation pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in an amount sufficient to cover the costs to the department of administering and enforcing the provisions of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437).

C.52:27D-430 Regulations, requirements, guidelines.

17. The commissioner may adopt regulations, including amendments to the Uniform Construction Code, N.J.A.C.5:23-1.1 et seq., prescribing standards, including appropriate training and certification requirements, governing safe practices for construction work that, although not a lead abatement, may create a lead hazard to an occupant of a building or structure. In addition, the commissioner may adopt any applicable requirements or guidelines established by federal law or regulation.

C.52:27D-431 Enforcement by commissioner, representative.

18. Sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437) shall be enforced by the commissioner or his representative who shall have the right of entry to all premises at which the department has reason to believe that lead abatement or evaluation activities may have taken place or are taking place or to any premises used or occupied by a business firm subject to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437); and the right to review any records for the purposes of inspection or investigation.

C.52:27D-432 Denial, suspension, conditions upon, revocation, refusal to renew certification.

19. a. The department may deny, suspend, impose conditions upon, revoke, or refuse to renew a certification for good cause, including:

(1) violating, or abetting another to commit a violation of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437);

(2) making a false statement on an application for certification, or in providing other information required by the department;

(3) misrepresentation of qualifications, or fraudulently obtaining certification;

(4) engaging in practices during lead abatement work contrary to safe procedures established therefor; and

(5) employing persons to perform lead abatement or lead evaluation work who are not certified pursuant to section 3 of P.L.1993, c.288 (C.26:2Q-3) to perform such work.

b. A business firm whose application or certification is denied, suspended, conditionally issued, revoked, or not renewed is entitled to a hearing pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. Denial of, suspension of, the imposition of conditions upon, revocation of, or refusal to renew a certification shall not limit the department from pursuing against the applicant or certificate holder any other lawful remedy available to the department.

d. A business firm whose certification has been revoked shall be ineligible to apply for certification for three years from the date of revocation. This ineligibility shall extend to any other business firm having any proprietor, officer, director, general partner, or shareholder or limited partner with at least a 10% interest, in common with the business firm whose certification was revoked.

C.52:27D-433 Civil actions for injunctive relief to enforce, prevent violations.

20. If the department has reason to believe that a condition exists that poses an imminent threat to the public health, safety or welfare, the department may initiate a civil action in a court of competent jurisdiction for injunctive relief to enforce or prevent a violation of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437). The court may proceed in the action in a summary manner.

C.52:27D-434 Violators guilty of disorderly persons offense, corporate liability.

21. Any person who knowingly or purposely:

a. hinders or delays the department in the enforcement of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437);

b. fails to obtain certification required by sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437);

c. refuses to make his certification accessible to the commissioner; or

d. otherwise violates any provision of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437); is guilty of a disorderly persons offense. If the person is a corporation, all officers, directors, and shareholders owning at least a 10% interest in the corporation may be held liable for any violation by the corporation pursuant to this section.

C.52:27D-435 Imposition of administrative civil penalty, violation defined.

22. As an alternative, or in addition to the provisions of section 21 of P.L.1993, c.288 (C.52:27D-434), the commissioner may, subject to notice and hearing, impose an administrative civil penalty for a violation set forth in this section not to exceed \$1,000 for the first offense and \$5,000 for each subsequent offense. If the violation is of a continuing nature, each day it continues constitutes an additional and separate violation.

The penalty may be sued for and recovered by and in the name of the commissioner in a civil action in a court of competent jurisdiction by a summary proceeding under "the penalty enforcement law," N.J.S.2A:58-1 et seq. For the purposes of this act, the Superior Court and the municipal court shall have jurisdiction to enforce the provisions of "the penalty enforcement law."

The department may compromise and settle a claim for a penalty under this section in such amount as the department determines to be appropriate and equitable.

a. As used in this section, a violation shall include the:

(1) obstructing, hindering, delaying or interfering by force or otherwise with the commissioner in the exercise of any power or the discharge of any function or duty pursuant to the provisions of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437);

(2) preparing, uttering or rendering of any false statements, reports, documents, plans or specifications permitted or required pursuant to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437); or

(3) refusal or failure to comply with a ruling, action, order or notice of the commissioner pursuant to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437).

b. A person shall be deemed to have violated or caused to be violated the provisions of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437) if an officer, agent or employee under his control has violated or caused to be vio-

lated any provision of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437).

c. If a person subject to sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437) is a corporation, all officers, directors and shareholders having at least a 10% interest shall be jointly and individually liable for any violation by the corporation.

C.52:27D-436 Regulations, requirements, guidelines.

23. The department, in consultation with the Department of Health, shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to implement the provisions of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437), including regulations prescribing standards for the performance of lead abatement work. Additionally, the commissioner may adopt any applicable requirements or guidelines established by federal law or regulation, including any requirements or guidelines that apply to homeowners or other property owners, notwithstanding that the requirements or guidelines may be inconsistent with the provisions of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437).

C.52:27D-437 Delegation of administrative, enforcement duties, functions.

24. The department shall delegate, by rule or by interagency agreement pursuant to R.S.52:14-4, to the Department of Labor, its administrative and enforcement duties and functions pursuant to the provisions of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437) relating to the certification of business firms to perform lead evaluation or abatement work on public buildings, commercial buildings, bridges or any other buildings or structures that do not contain dwelling units. When the Department of Labor receives such a delegation, the Department of Labor shall be reimbursed by the department in an amount that is sufficient to cover the costs incurred by the Department of Labor in administering and enforcing the provisions of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437). The costs incurred by the Department of Labor in administering and enforcing this act shall be annually certified by the Director of the Office of Management and Budget in the Department of the Treasury. The Department of Community Affairs shall have ultimate responsibility for ensuring that lead evaluation and abatement work on all buildings and structures conforms to the requirements of sections 14 through 24 of P.L.1993, c.288 (C.52:27D-427 through C.52:27D-437).

25. This act shall take effect 18 months after the date of enactment; except that sections 12 and 23 of this act shall take effect immediately and sections 3, 4 and 15 shall take effect six months after the date of enactment.

Approved December 16, 1993.

CHAPTER 289

AN ACT to validate certain proceedings for the issuance of bonds of school districts and any bonds or other obligations issued or to be issued pursuant to such proceedings.

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

1. All proceedings heretofore had or taken by any school district or at any school election for the authorization or issuance of bonds of the school district and any bonds or other obligations of the school district issued or to be issued in pursuance of any proposal adopted by the legal voters at such meeting or election, are hereby ratified, validated and confirmed, notwithstanding that the proposal was not in the form required pursuant to N.J.S.18A:24-22; provided that no action, suit, or other proceeding of any nature to contest the validity of such proceedings has heretofore been instituted prior to the date upon which this act shall take effect and within the time fixed therefor by or pursuant to law or rule of court, or when such time has not heretofore expired, if instituted within 15 days after the effective date of this act.

2. This act shall take effect immediately.

Approved December 16, 1993.

CHAPTER 290

AN ACT providing for the licensure by municipal authorities of premises for the location of rooming and boarding houses and supplementing Title 40 of the Revised Statutes.

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

C.40:52-9 Definitions.

1. As used in this act:

“Licensing authority” means a municipal governing body or, in a municipality which has established a rooming or boarding house site licensing board pursuant to section 10 of this act, the board so established.

“Operator” means any person including for the purposes of this act any corporation or association of persons and any agency or instrumentality of State or local government, which operates or proposes to operate a rooming or boarding house.

“Owner” means the holder of title in fee simple to premises and any lessor or sublessor of whom an operator is or proposes to become a sublessor in coicensed pursuant to P.L.1979, c.496 (C.55:15B-1 et seq.).

“Population” means the most recent population count reported by the Department of Labor.

“Rooming or boarding house” means a rooming or boarding house licensed pursuant to P.L.1979, c.496 (C.55:13B-1 et al.).

C.40:52-10 Licensing of rooming, boarding houses.

2. The governing body of a municipality may, by ordinance, elect to license rooming and boarding houses located in the municipality in accordance with the provisions of this act. If the governing body elects to license such facilities, the governing body shall so notify the Commissioner of Community Affairs or his designee.

C.40:52-11 Operation of rooming, boarding house, license required.

3. a. Except as provided in subsection b. of this section, no rooming or boarding house shall hereafter be located or operated in any municipality which elects to license such facilities except upon premises licensed for that purpose by the licensing authority of the municipality.

b. Any rooming or boarding house that is in lawful operation on the date of enactment of this act shall be entitled to continue in operation for one year from that date and, if the owner of the premises applies for licensure not later than the 60th day next preceding the expiration of that year, until a final determination is made upon that application.

C.40:52-12 Application for license; fees.

4. a. Application for a license under this act shall be made by the owner to the appropriate licensing authority. The application shall be in such form, and shall contain such information and dec-

larations and be accompanied by such application fee, not exceeding \$200, as may be prescribed by resolution of the licensing authority, and shall be filed with the municipal clerk or the secretary of the licensing board, if such a board is established in the municipality. The form of application prescribed by the licensing authority shall require the submission of such information and supporting documentation as provide a basis upon which the licensing authority may conduct the investigation and reach the conclusions required under this act for the issuance or denial of a license. To the extent that the form of application requires the furnishing of information by the operator, it shall be the responsibility of the applicant owner to obtain such information and to exercise due care and diligence to assure its completeness and accuracy. The licensing authority may require that information required from the operator be duly sworn to by the operator in order to form a valid part of the application.

b. An application filed pursuant to subsection a. of this section shall include a deposit in full of the prescribed application fee, of which 90% shall be refunded if the application is denied, and 10% retained and employed in defraying the expenses of the licensing authority in carrying out its functions under this act.

c. All applications by a natural person, partnership or unincorporated association of natural persons shall be duly sworn to by each of the applicants. An application by a corporation shall be duly sworn to by the president or vice president of the corporation. All statements in an application shall be deemed material, and any person who knowingly misstates any material fact therein shall be guilty of a crime of the fourth degree.

d. Every applicant for a license shall, after filing the application, cause notice of the pendency of the application to be published, in a form prescribed by the licensing authority, once a week for two weeks successively in a newspaper, printed in the English language, published and circulated in the county in which the premises for which the license, or renewal thereof, are located. The notice shall include the time and place of the public hearing prescribed in section 6 of this act, and the second publication thereof shall be made not less than one week nor more than two weeks prior to the date set by the licensing authority for that hearing.

C.40:52-13 Conditions for licensure.

5. It shall be the duty of the licensing authority to receive applications made pursuant to section 4 of this act and to conduct such investigations as may be necessary to establish:

a. With respect to the premises for which a license is sought (1) that they are in compliance with all applicable building, housing, health and safety codes and regulations; (2) that the location of the premises will not, in conjunction with the proximity of other rooming and boarding houses, lead to an excessive concentration of such facilities in the municipality or a particular section thereof;

b. With respect to the owner or owners of the premises: (1) if a natural person or persons, that he or they are 21 years of age or older, citizens of the United States and residents of the State of New Jersey, and never convicted, in this State or elsewhere, of a crime involving moral turpitude, or of any crime under any law of this State licensing or regulating a rooming or boarding house, and have never had a license required pursuant to P.L.1979, c.496 (C.55:13B-1 et al.) revoked; (2) if a corporation, that all officers and members of the board of directors, and every stockholder holding 10% or more of the stock of the corporation, directly or indirectly having a beneficial interest therein, have the same qualifications as set forth in this subsection for an applicant who is a natural person;

c. With respect to the operator or proposed operator, that he meets the requirements for licensure by the Department of Community Affairs; and

d. That the owner and operator, either individually or jointly, have established sufficient guarantee of financial and other responsibility to assure appropriate relocation of the residents of the rooming or boarding house to suitable facilities in the event that the license is subsequently revoked or its renewal denied. The Department of Community Affairs shall determine, in the case of each type of rooming and boarding house under its jurisdiction, what constitutes suitable facilities for this purpose.

C.40:52-14 Conditions for refusing license, public hearing.

6. a. In conducting its investigations pursuant to section 5 of this act, a licensing authority shall hold a public hearing, at which the applicant, the operator or proposed operator and all other parties in interest including members of the general public, shall be entitled to be heard upon the merits of the application and the suitability of the premises proposed for licensing. The time and place of the public hearing shall be determined within 30 days of receipt of the application, and shall be communicated to the applicant in sufficient time to enable compliance with the publication requirement under section 4 of this act.

b. No license shall be issued which would result in increasing the total number of persons authorized to be residents in rooming or boarding houses within the municipality to (1) more than 100 in a municipality having a population of 20,000 or fewer, or (2) to more than one-half of one percent of the population in any other municipality; but nothing in this subsection shall warrant refusal of a license or license renewal for premises where a rooming or boarding house has been in lawful operation prior to the enactment of this act.

c. No license shall be issued for premises when any part of the boundary line of the premises is within 1,000 feet of the boundary line of any other premises for which a license is in force; in the case of a municipality with a population greater than 100,000, according to the latest federal decennial census, this standard may be increased to 2,000 feet, at the discretion of the licensing authority; but nothing in this subsection shall warrant refusal of a license or license renewal for premises where a rooming or boarding house has been in lawful operation prior to the enactment of this act.

d. Any municipality with a population greater than 100,000 according to the latest federal decennial census may refuse to grant a license for any rooming and boarding house to be situated in a neighborhood zoned as single family residential.

C.40:52-15 Issuance, renewal of license.

7. a. After the public hearing pursuant to section 6 of this act, the licensing authority shall determine, in accordance with the requirements under section 5 and, when appropriate, section 6 of this act, whether to grant the license. A license when issued shall be valid for one year from the date of issuance and until such time as the licensing authority has acted upon an application for renewal, unless sooner terminated by revocation pursuant to the terms of this act.

b. Not later than the 60th day preceding the anniversary date of issuance, the holder of a license shall make application to the licensing authority for its renewal. Application for a renewal shall follow the same procedure and requirements as prescribed for a new application and shall necessitate de novo consideration and determination by the licensing authority in the same manner as a new application.

C.40:52-16 Revocation of license.

8. a. A licensing authority may revoke a license granted under this act for any of the following reasons:

(1) A finding that there was any misstatement of material fact in the application upon which the license was issued.

(2) The occurrence of any fact which, had it occurred and been known to the licensing authority before issuance of the license, would have resulted in the denial of the application.

(3) Repeated violations, or prolonged failure to correct any violation, of any applicable building, housing, health or safety code or regulations.

(4) Refusal to allow access to any portion of the licensed premises at all reasonable times, with or without advance notice, in order that officers or agents of the licensing authority, or any official charged with enforcement within the municipality of any building, housing, health or safety code or regulations applicable to the premises may determine compliance with such codes or regulations.

(5) Revocation by the Department of Community Affairs of the operator's license or other authorization to operate a rooming or boarding house on the premises.

(6) Notification by the Department of Community Affairs that the premises are not, or are no longer suitable for operation of a rooming or boarding house on the premises.

(7) Failure or refusal to comply with any lawful regulation or order of the licensing authority.

b. A license shall not be revoked until five days' prior notice of the grounds therefor has been served upon the licensee, either personally or by certified mail addressed to the licensee at the licensed premises, and a reasonable opportunity given to the licensee to be heard thereon.

C.40:52-17 Refusal to grant, renew license; appeal.

9. Upon determination by a licensing authority to refuse the granting or renewal of a license, or to revoke a license, the licensee affected shall be entitled to appeal to the Commissioner of Community Affairs for a review of that determination; and the commissioner shall have authority to reverse the licensing authority's determination if it concludes that the application was improperly denied or the revocation improperly imposed. Such review by the commissioner shall be in conformity with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The decision of the commissioner in such cases shall be subject to appeal to the Appellate Division of the Superior Court. If an applicant for license renewal has made timely and sufficient application for a renewal in accordance with the provisions of this act and the rules of the licensing pursuant thereto, his license shall not expire until any appeals under this section have been finally determined and disposed of.

C.40:52-18 Licensing authority, establishment of rooming and boarding house site licensing board.

10. a. In a municipality of less than 20,000 population, the licensing authority shall be the governing body of the municipality.

b. In a municipality of more than 20,000 population, the municipal governing body may, by ordinance, establish a rooming and boarding house site licensing board, which shall be the licensing authority in and for that municipality. The board shall consist of three persons, no more than two of whom may be of the same political party, to be appointed by resolution of the municipal governing body. Members shall serve for terms of three years and until their successors are appointed and qualified into office; except that of the initial three appointments, one shall be for a term of one year and one for a term of two years. Members of the municipal governing body shall be eligible for appointment to the board. Members of the board shall receive no salaries, but shall be entitled to reimbursement for actual expenses necessarily incurred in the performance of their duties as such members. They may be removed by the appointing authority for cause. They shall not be subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes.

(1) A licensing authority established pursuant to this subsection may, with the approval of the municipal governing body, employ a secretary, who shall receive such annual salary as shall be fixed by municipal ordinance.

(2) In carrying out its functions and duties under this act, a licensing authority established pursuant to this subsection shall be entitled to call to its assistance and avail itself of personnel and facilities of the municipal government as it may require and as may be made available to it for that purpose.

11. This act shall take effect on the 90th day next following the date of enactment.

Passed December 16, 1993.

CHAPTER 291

AN ACT concerning the offense of attempting to lure a child into a motor vehicle and supplementing chapter 13 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:13-6 Luring, enticing child into motor vehicle, attempts; crime of third degree.

1. A person commits a crime of the third degree if he attempts to lure or entice a child into a motor vehicle 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.

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.

2. This act shall take effect immediately.

Approved December 21, 1993.

CHAPTER 292

AN ACT concerning the conduct and operation of casino gaming and casino simulcasting, amending various parts of the statutory law, and supplementing P.L.1977, c.110 (C.5:12-1 et seq.).

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

1. Section 5 of P.L.1977, c.110 (C.5:12-5) is amended to read as follows:

C.5:12-5 “Authorized game” or “authorized gambling game”.

5. “Authorized Game” or “Authorized Gambling Game”-- Roulette, baccarat, blackjack, craps, big six wheel, slot machines, minibaccarat, red dog, pai gow, and sic bo; any variations or composites of such games, provided that such variations or composites are found by the commission suitable for use after an appropriate test or experimental period under such terms and conditions as the commission may deem appropriate; and any other game which is determined by the commission to be compatible with the public interest and to be suitable for casino use after such appropriate test or experimental period as the commission may deem appropriate. “Authorized game” or “authorized gambling game” includes gam-

ing tournaments in which players compete against one another in one or more of the games authorized herein or by the commission or in approved variations or composites thereof if the tournaments are authorized by the commission.

2. Section 11 of P.L.1977, c.110 (C.5:12-11) is amended to read as follows:

C.5:12-11 "Casino security employee".

11. "Casino security employee" -- Any natural person employed by a casino licensee or its agent to provide physical security in a casino, simulcasting facility, or restricted casino area.

3. Section 27 of P.L.1977, c.110 (C.5:12-27) is amended to read as follows:

C.5:12-27 "Hotel" or "approved hotel".

27. "Hotel" or "approved hotel" -- A single building, or two or more buildings which are physically connected in a manner deemed appropriate by the commission and which are operated as one casino-hotel facility under the provisions of the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.), located within the limits of the city of Atlantic City as said limits were defined as of November 2, 1976, and containing not fewer than the number of sleeping units required by section 83 of P.L.1977, c.110 (C.5:12-83), each of which sleeping units shall: a. be at least 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges; b. contain private bathroom facilities; and c. be held available and used regularly for the lodging of tourists and convention guests. In no event shall the main entrance or only access to an approved hotel be through a casino or simulcasting facility.

4. Section 35 of P.L.1977, c.110 (C.5:12-35) is amended to read as follows:

C.5:12-35 "Operation certificate".

35. "Operation certificate" -- A certificate issued by the commission which certifies that operation of a casino and, if applicable, a simulcasting facility conforms to the requirements of this act and applicable regulations.

5. Section 53 of P.L.1977, c.110 (C.5:12-53) is amended to read as follows:

C.5:12-53 Compensation of members.

53. Compensation of members. Each member of the commission shall receive an annual salary of \$90,000. The chairman shall receive \$5,000.00 per annum in addition to his salary as a member of the commission.

6. Section 63 of P.L.1977, c.110 (C.5:12-63) is amended to read as follows:

C.5:12-63 Duties of the commission.

63. Duties of the Commission. The Casino Control Commission shall have general responsibility for the implementation of this act, as hereinafter provided, including, without limitation, the responsibility:

- a. To hear and decide promptly and in reasonable order all license, registration, certificate, and permit applications and causes affecting the granting, suspension, revocation, or renewal thereof;
- b. To conduct all hearings pertaining to civil violations of this act or regulations promulgated hereunder;
- c. To promulgate such regulations as in its judgment may be necessary to fulfill the policies of this act;
- d. To collect all license and registration fees and taxes imposed by this act and the regulations issued pursuant hereto;
- e. To levy and collect penalties for the violation of provisions of this act and the regulations promulgated hereunder;
- f. To be present through its inspectors and agents at all times during the operation of any casino or simulcasting facility for the purpose of certifying the revenue thereof, receiving complaints from the public relating to the conduct of gaming and simulcast wagering operations, examining records of revenues and procedures, and conducting periodic reviews of operations and facilities for the purpose of evaluating current or suggested provisions of P.L.1977, c.110 (C.5:12-1 et seq.) and the regulations promulgated thereunder;
- g. To refer to the division for investigation and prosecution any evidence of a violation of P.L.1977, c.110 (C.5:12-1 et seq.) or the regulations promulgated thereunder; and
- h. To review and rule upon any complaint by a casino licensee regarding any investigative procedures of the division which are unnecessarily disruptive of casino or simulcasting facility operations. The need to inspect and investigate shall be presumed at all times. The disruption of a licensee's operations shall be proved by clear and convincing evidence, which evidence shall establish that: (1) the procedures had no reasonable law enforcement pur-

pose, and (2) the procedures were so disruptive as to inhibit unreasonably casino or simulcasting facility operations.

7. Section 69 of P.L.1977, c.110 (C.5:12-69) is amended to read as follows:

C.5:12-69 Regulations.

69. Regulations. a. The commission shall be authorized to adopt, amend, or repeal such regulations, consistent with the policy and objectives of this act, as it may deem necessary or desirable for the public interest in carrying out the provisions of this act.

b. Such regulations shall be adopted, amended, and repealed in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

c. Any interested person may, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), file a petition with the commission requesting the adoption, amendment or repeal of a regulation.

d. The commission may, in emergency circumstances, summarily adopt, amend or repeal any regulation pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

e. Notwithstanding any other provision of this act or the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the commission may, after notice provided in accordance with this subsection, authorize the temporary adoption, amendment or repeal of any rule concerning the conduct of gaming or simulcast wagering or the use or design of gaming or simulcast wagering equipment for an experimental period not to exceed 270 days for the purpose of determining whether such rules should be adopted on a permanent basis in accordance with the requirements of this section. Any rules experiment authorized by this subsection shall be conducted under such terms and conditions as the commission may deem appropriate. Notice of any temporary rulemaking action taken by the commission pursuant to this subsection shall be published in the New Jersey Register, and provided to the newspapers designated by the commission pursuant to subsection d. of section 3 of P.L.1975, c.231 (C.10:4-8), at least seven days prior to the initiation of the experimental period and shall be prominently posted in each casino or simulcasting facility participating in the experiment. Nothing herein shall be deemed to require the publication of the text of any temporary rule adopted by the commission or notice of any modification of a rules experiment

initiated in accordance with this subsection. The text of any temporary rule adopted by the commission shall be posted in each casino or simulcasting facility participating in the experiment and shall be available upon request from the commission.

8. Section 70 of P.L.1977, c.110 (C.5:12-70) is amended to read as follows:

C.5:12-70 Required regulations.

70. Required Regulations. The commission shall, without limitation on the powers conferred in the preceding section, include within its regulations the following specific provisions in accordance with the provisions of this act:

- a. Prescribing the methods and forms of application which any applicant shall follow and complete prior to consideration of his application by the commission;
- b. Prescribing the methods, procedures and form for delivery of information concerning any person's family, habits, character, associates, criminal record, business activities and financial affairs;
- c. Prescribing procedures for the fingerprinting of an applicant, employee of a licensee, or registrant, or other methods of identification which may be necessary in the judgment of the commission to accomplish effective enforcement of restrictions on access to the casino floor, the simulcasting facility, and other restricted areas of the casino hotel complex;
- d. Prescribing the manner and procedure of all hearings conducted by the commission or any hearing examiner, including special rules of evidence applicable thereto and notices thereof;
- e. Prescribing the manner and method of collection of payments of taxes, fees, and penalties;
- f. Defining and limiting the areas of operation, the rules of authorized games, odds, and devices permitted, and the method of operation of such games and devices;
- g. Regulating the practice and procedures for negotiable transactions involving patrons, including limitations on the circumstances and amounts of such transactions, and the establishment of forms and procedures for negotiable instrument transactions, redemptions, and consolidations;
- h. Prescribing grounds and procedures for the revocation or suspension of operating certificates and licenses;
- i. Governing the manufacture, distribution, sale, and servicing of gaming devices and equipment;

j. Prescribing for gaming operations the procedures, forms and methods of management controls, including employee and supervisory tables of organization and responsibility, and minimum security standards, including security personnel structure, alarm and other electrical or visual security measures;

k. Prescribing the qualifications of, and the conditions pursuant to which, engineers, accountants, and others shall be permitted to practice before the commission or to submit materials on behalf of any applicant or licensee; provided, however, that no member of the Legislature, nor any firm with which said member is associated, shall be permitted to appear or practice or act in any capacity whatsoever before the commission or division regarding any matter whatsoever, nor shall any member of the family of the Governor or of a member of the Legislature be permitted to so practice or appear in any capacity whatsoever before the commission or division regarding any matter whatsoever;

l. Prescribing minimum procedures for the exercise of effective control over the internal fiscal affairs of a licensee, including provisions for the safeguarding of assets and revenues, the recording of cash and evidence of indebtedness, and the maintenance of reliable records, accounts, and reports of transactions, operations and events, including reports to the commission;

m. Providing for a minimum uniform standard of accountancy methods, procedures and forms; a uniform code of accounts and accounting classifications; and such other standard operating procedures, including those controls listed in section 99a. hereof, as may be necessary to assure consistency, comparability, and effective disclosure of all financial information, including calculations of percentages of profit by games, tables, gaming devices and slot machines;

n. Requiring periodic financial reports and the form thereof, including an annual audit prepared by a certified public accountant licensed to do business in this State, attesting to the financial condition of a licensee and disclosing whether the accounts, records and control procedures examined are maintained by the licensee as required by this act and the regulations promulgated hereunder;

o. Governing the gaming-related advertising of casino licensees, their employees and agents, with the view toward assuring that such advertisements are in no way deceptive; provided, however, that such regulations: (1) shall not prohibit the advertisement of casino location, hours of operation, or types of games and other amenities offered; (2) shall prohibit the advertisement of information about odds, the number of games, and the

size of the casino or simulcasting facility; and (3) shall require the words "Bet with your head, not over it," or some comparable language approved by the commission, to appear on all billboards, signs, and other on-site advertising of a casino operation and shall require the words "If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER," or some comparable language approved by the commission, which language shall include the words "gambling problem" and "call 1-800 GAMBLER," to appear legibly on all print, billboard, and sign advertising of a casino operation; and

p. (Deleted by amendment, P.L.1991, c.182).

q. Concerning the distribution and consumption of alcoholic beverages on the premises of the licensee, which regulations shall be insofar as possible consistent with Title 33 of the Revised Statutes, and shall deviate only insofar as necessary because of the unique character of the hotel casino premises and operations;

r. (Deleted by amendment, P.L.1991, c.182).

9. Section 71 of P.L.1977, c.110 (C.5:12-71) is amended to read as follows:

C.5:12-71 Regulation requiring exclusion of certain persons.

71. Regulation Requiring Exclusion of Certain Persons. a. The commission shall, by regulation, provide for the establishment of a list of persons who are to be excluded or ejected from any licensed casino establishment. Such provisions shall define the standards for exclusion, and shall include standards relating to persons:

(1) Who are career or professional offenders as defined by regulations of the commission;

(2) Who have been convicted of a criminal offense under the laws of any state or of the United States, which is punishable by more than six months in prison, or any crime or offense involving moral turpitude; or

(3) Whose presence in a licensed casino hotel would, in the opinion of the commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein, or both.

The commission shall promulgate definitions establishing those categories of persons who shall be excluded pursuant to this section, including cheats and persons whose privileges for licensure or registration have been revoked.

b. Race, color, creed, national origin or ancestry, or sex shall not be a reason for placing the name of any person upon such list.

c. The commission may impose sanctions upon a licensed casino or individual licensee or registrant in accordance with the provisions of this act if such casino or individual licensee or registrant knowingly fails to exclude or eject from the premises of any licensed casino any person placed by the commission on the list of persons to be excluded or ejected.

d. Any list compiled by the commission of persons to be excluded or ejected shall not be deemed an all-inclusive list, and licensed casino establishments shall have a duty to keep from their premises persons known to them to be within the classifications declared in paragraphs (1) and (2) of subsection a. of this section and the regulations promulgated thereunder, or known to them to be persons whose presence in a licensed casino hotel would be inimical to the interest of the State of New Jersey or of licensed gaming therein, or both, as defined in standards established by the commission.

e. Whenever the division petitions the commission to place the name of any person on a list pursuant to this section, the commission shall serve notice of such fact to such person by personal service, by certified mail at the last known address of such person, or by publication daily for one week in a newspaper of general circulation in Atlantic City.

f. Within 30 days after service of the petition in accordance with subsection e. of this section, the person named for exclusion or ejection may demand a hearing before the commission, at which hearing the division shall have the affirmative obligation to demonstrate by a preponderance of the evidence that the person named for exclusion or ejection satisfies the criteria for exclusion established by this section and the commission's regulations. Failure to demand such a hearing within 30 days after service shall be deemed an admission of all matters and facts alleged in the division's petition and shall preclude a person from having an administrative hearing, but shall in no way affect his or her right to judicial review as provided herein.

g. The division may file an application with the commission requesting preliminary placement on the list of a person named in a petition for exclusion or ejection pending completion of a hearing on the petition. The hearing on the application for preliminary placement shall be a limited proceeding at which the division shall have the affirmative obligation to demonstrate that there is a reasonable possibility that the person satisfies the criteria for exclusion established by this section and the commission's regulations. If a person has been placed on the list as a result of an

application for preliminary placement, unless otherwise agreed by the commission and the named person, a hearing on the petition for exclusion or ejection shall be initiated within 30 days after the receipt of a demand for such hearing or the date of preliminary placement on the list, whichever is later.

h. If, upon completion of the hearing on the petition for exclusion or ejection, the commission determines that the person named therein does not satisfy the criteria for exclusion established by this section and the commission's regulations, the commission shall issue an order denying the petition. If the person named in the petition for exclusion or ejection had been placed on the list as a result of an application for preliminary placement, the commission shall notify all casino licensees of his or her removal from the list.

i. If, upon completion of a hearing on the petition for exclusion or ejection, the commission determines that placement of the name of the person on the exclusion list is appropriate, the commission shall make and enter an order to that effect, which order shall be served on all casino licensees. Such order shall be subject to review by the Superior Court in accordance with the rules of court.

10. Section 74 of P.L.1977, c.110 (C.5:12-74) is amended to read as follows:

C.5:12-74 Minutes and records.

74. Minutes and Records. a. The commission shall cause to be made and kept a record of all proceedings held at public meetings of the commission. A verbatim transcript of those proceedings shall be prepared by the commission upon the request of any commissioner or upon the request of any other person and the payment by that person of the costs of preparation. A copy of a transcript shall be made available to any person upon request and payment of the costs of preparing the copy.

A true copy of the minutes of every meeting of the commission and of any regulations finally adopted by the commission shall be forthwith delivered, by and under the certification of the executive secretary, to the Governor, the Secretary of the Senate, and the Clerk of the General Assembly.

b. The commission shall keep and maintain a list of all applicants for licenses and registrations under this act together with a record of all actions taken with respect to such applicants, which file and record shall be open to public inspection; provided, how-

ever, that the foregoing information regarding any applicant whose license or registration has been denied, revoked, or not renewed shall be removed from such list after five years from the date of such action.

c. The commission shall maintain such other files and records as may be deemed desirable.

d. Except as provided in subsection h. of this section, all information and data required by the commission to be furnished hereunder, or which may otherwise be obtained, relative to the internal controls specified in section 99a. of this act or to the earnings or revenue of any applicant, registrant, or licensee shall be considered to be confidential and shall not be revealed in whole or in part except in the course of the necessary administration of this act, or upon the lawful order of a court of competent jurisdiction, or, with the approval of the Attorney General, to a duly authorized law enforcement agency.

e. All information and data pertaining to an applicant's criminal record, family, and background furnished to or obtained by the commission from any source shall be considered confidential and shall be withheld in whole or in part, except that any information shall be released upon the lawful order of a court of competent jurisdiction or, with the approval of the Attorney General, to a duly authorized law enforcement agency.

f. Notice of the contents of any information or data released, except to a duly authorized law enforcement agency pursuant to subsection d. or e. of this section, shall be given to any applicant, registrant, or licensee in a manner prescribed by the rules and regulations adopted by the commission.

g. Files, records, reports and other information in the possession of the New Jersey Division of Taxation pertaining to licensees shall be made available to the commission and the division as may be necessary to the effective administration of this act.

h. The following information to be reported periodically to the commission by a casino licensee shall not be considered confidential and shall be made available for public inspection:

(1) A licensee's gross revenue from all authorized games as herein defined, and its gross revenue from simulcast wagering;

(2) (a) The dollar amount of patron checks initially accepted by a licensee, (b) the dollar amount of patron checks deposited to the licensee's bank account, (c) the dollar amount of such checks initially dishonored by the bank and returned to the licensee as

“uncollected,” and (d) the dollar amount ultimately uncollected after all reasonable efforts;

(3) The amount of gross revenue tax or investment alternative tax actually paid and the amount of investment, if any, required and allowed, pursuant to section 144 of P.L.1977, c.110 (C.5:12-144) and section 3 of P.L.1984, c.218 (C.5:12-144.1);

(4) A list of the premises and the nature of improvements, costs thereof and the payees for all such improvements, which were the subject of an investment required and allowed pursuant to section 144 of P.L.1977, c.110 (C.5:12-144) and section 3 of P.L.1984, c.218 (C.5:12-144.1);

(5) The amount, if any, of tax in lieu of full local real property tax paid pursuant to section 146, and the amount of profits, if any, recaptured pursuant to section 147;

(6) A list of the premises, nature of improvements and costs thereof which constitute the cumulative investments by which a licensee has recaptured profits pursuant to section 147; and

(7) All quarterly and annual financial statements presenting historical data which are submitted to the commission, including all annual financial statements which have been audited by an independent certified public accountant licensed to practice in the State of New Jersey.

Nothing in this subsection shall be construed to limit access by the public to those forms and documents required to be filed pursuant to Article 11 of this act.

11. Section 76 of P.L.1977, c.110 (C.5:12-76) is amended to read as follows:

C.5:12-76 General duties and powers.

76. General Duties and Powers. a. The Division of Gaming Enforcement shall promptly and in reasonable order investigate all applications, enforce the provisions of this act and any regulations promulgated hereunder, and prosecute before the commission all proceedings for violations of this act or any regulations promulgated hereunder. The division shall provide the commission with all information necessary for all action under Article 6 of this act and for all proceedings involving enforcement of the provisions of this act or any regulations promulgated hereunder.

b. The division shall:

(1) Investigate the qualifications of each applicant before any license, certificate, or permit is issued pursuant to the provisions of this act;

- (2) Investigate the circumstances surrounding any act or transaction for which commission approval is required;
- (3) Investigate violations of this act and regulations promulgated hereunder;
- (4) Initiate, prosecute and defend such proceedings before the commission, or appeals therefrom, as the division may deem appropriate;
- (5) Provide assistance upon request by the commission in the consideration and promulgation of rules and regulations;
- (6) Conduct continuing reviews of casino operations through on-site observation and other reasonable means to assure compliance with this act and regulations promulgated hereunder, subject to subsection h. of section 63 of this act;
- (7) Receive and take appropriate action on any referral from the commission relating to any evidence of a violation of P.L.1977, c.110 (C.5:12-1 et seq.) or the regulations promulgated thereunder;
- (8) Exchange fingerprint data with, and receive criminal history record information from, the Federal Bureau of Investigation for use in considering applicants for any license or registration issued pursuant to the provisions of P.L.1977, c.110 (C.5:12-1 et seq.);
- (9) Conduct audits of casino operations at such times, under such circumstances, and to such extent as the director shall determine, including reviews of accounting, administrative and financial records, and management control systems, procedures and records utilized by a casino licensee; and
- (10) Be entitled to request and receive information, materials and any other data from any licensee or registrant, or applicant for a license or registration under this act.

12. Section 80 of P.L.1977, c.110 (C.5:12-80) is amended to read as follows:

C.5:12-80 General provisions.

80. General Provisions. a. It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications, and for a casino license the qualifications of each person who is required to be qualified under this act as well as the qualifications of the facility in which the casino is to be located.

b. Any applicant, licensee, registrant, or any other person who must be qualified pursuant to this act shall provide all information required by this act and satisfy all requests for information pertaining to qualification and in the form specified by the com-

mission. All applicants, registrants, and licensees shall waive liability as to the State of New Jersey, and its instrumentalities and agents, for any damages resulting from any disclosure or publication in any manner, other than a willfully unlawful disclosure or publication, of any material or information acquired during inquiries, investigations or hearings.

c. All applicants, licensees, registrants, intermediary companies, and holding companies shall consent to inspections, searches and seizures and the supplying of handwriting exemplars as authorized by this act and regulations promulgated hereunder.

d. All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, and to cooperate in any inquiry or investigation conducted by the division and any inquiry, investigation, or hearing conducted by the commission. If, upon issuance of a formal request to answer or produce information, evidence or testimony, any applicant, licensee, registrant, or any other person who shall be qualified pursuant to this act refuses to comply, the application, license, registration or qualification of such person may be denied or revoked by the commission.

e. No applicant or licensee shall give or provide, offer to give or provide, directly or indirectly, any compensation or reward or any percentage or share of the money or property played or received through gaming or simulcast wagering activities, except as authorized by this act, in consideration for obtaining any license, authorization, permission or privilege to participate in any way in gaming or simulcast wagering operations.

f. Each applicant or person who must be qualified under this act shall be photographed and fingerprinted for identification and investigation purposes in accordance with procedures established by the commission.

g. All licensees, all registrants, all persons required to be qualified under this act, and all persons employed by a casino service industry licensed pursuant to this act, shall have a duty to inform the commission or division of any action which they believe would constitute a violation of this act. No person who so informs the commission or the division shall be discriminated against by an applicant, licensee or registrant because of the supplying of such information.

h. Any person who must be qualified pursuant to the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.) in order to hold

the securities of a casino licensee or any holding or intermediary company of a casino licensee may apply for qualification status prior to the acquisition of any such securities. The commission may determine to accept such an application upon a finding that there is a reasonable likelihood that, if qualified, the applicant will obtain and hold securities of a licensee sufficient to require qualification. Such an applicant shall be subject to the provisions of this section and shall pay for the costs of all investigations and proceedings in relation to the application unless the applicant provides to the commission an agreement with one or more casino licensees which states that the licensee or licensees will pay those costs.

13. Section 83 of P.L.1977, c.110 (C.5:12-83) is amended to read as follows:

C.5:12-83 Approved hotel.

83. Approved Hotel. a. An approved hotel for purposes of this act shall be a hotel providing facilities in accordance with this section. Nothing in this section shall be construed to limit the authority of the commission to determine the suitability of facilities as provided in this act, and nothing in this section shall be construed to require a casino to be smaller than the maximum size herein provided.

b. (1) In the case of a casino hotel in operation on June 29, 1991, an approved hotel shall:

(a) contain at least the number of qualifying sleeping units, as defined in section 27 of P.L.1977, c.110 (C.5:12-27), which it had on that date, except that those units may be consolidated and reconfigured in order to form suites so long as there remain at least 500 qualifying sleeping units; and

(b) contain a casino of not more than the amount of casino space authorized on the basis of the provisions of this section which were in effect on June 28, 1991 and applicable to that casino at that time, unless the number of qualifying sleeping units under subparagraph (a) of this paragraph and the number of any qualifying sleeping units added after June 29, 1991 permit an increase on the following basis: 50,000 square feet for the first 500 qualifying sleeping units and 10,000 square feet for each additional 100 qualifying sleeping units above 500, up to a maximum of 200,000 square feet. No casino hotel in operation on June 29, 1991 shall be required to reduce the amount of its casino space below the amount authorized as of June 28, 1991 unless the

number of qualifying sleeping units is reduced below the number required in subparagraph (a) of this paragraph.

For the purpose of increasing casino space, an agreement approved by the commission for the addition of qualifying sleeping units within two years after the commencement of gaming operations in the additional casino space shall be deemed an addition of those rooms, but if the agreement is not fulfilled due to conditions within the control of the casino licensee, the casino licensee shall close the additional casino space or any portion thereof as directed by the commission.

The calculation of the number of qualifying sleeping units added with respect to any such casino hotel shall not include any qualifying sleeping unit or other hotel or motel room in existence in Atlantic City on June 29, 1991, whether or not that unit or room was offered or usable for occupancy on that date, or any replacement for such a unit or room which results from construction or renovation after that date, except that any hotel room in existence in Atlantic City on June 29, 1991 which was not used or available for use on that date and for at least 10 years prior to that date and which is reconstructed or replaced after the effective date of this amendatory and supplementary act, P.L.1993, c.159, and meets the specifications of a sleeping unit prescribed in section 27 of P.L.1977, c.110 (C.5:12-27) may be included in such calculation, and any replacement which, in the judgment of the commission, is an integral element of a program of neighborhood rehabilitation undertaken by the casino licensee with the approval of the city of Atlantic City may also be included in such calculation.

(2) In the case of a hotel in operation on June 29, 1991 in which a licensed casino was located and operated prior to, but not as of, that date, and in which a casino is reestablished after that date, an approved hotel shall:

(a) contain at least the number of qualifying sleeping units, as defined in section 27 of P.L.1977, c.110 (C.5:12-27), which it had on the date the casino ceased operations prior to June 29, 1991, except that those units may be consolidated and reconfigured in order to form suites so long as there remain at least 500 qualifying sleeping units; and

(b) contain a casino of not more than the amount of casino space the casino had on the date it ceased operations prior to June 29, 1991 unless the number of qualifying sleeping units under subparagraph (a) of this paragraph and the number of any qualifying sleeping units added after that date permit an increase on the

following basis: 50,000 square feet for the first 500 qualifying sleeping units and 10,000 square feet for each additional 100 qualifying sleeping units above 500, up to a maximum of 200,000 square feet. No casino hotel which operates pursuant to this paragraph shall be required to reduce the amount of its casino space below the amount it had on the date it ceased operations unless the number of qualifying sleeping units is reduced below the number required in subparagraph (a) of this paragraph.

For the purpose of increasing casino space, an agreement approved by the commission for the addition of qualifying sleeping units within two years after the commencement of gaming operations in the additional casino space shall be deemed an addition of those rooms, but if the agreement is not fulfilled due to conditions within the control of the casino licensee, the casino licensee shall close the additional casino space or any portion thereof as directed by the commission.

The calculation of the number of qualifying sleeping units added with respect to any such hotel shall not include any qualifying sleeping unit or other hotel or motel room in existence in Atlantic City on June 29, 1991, whether or not that unit or room was offered or usable for occupancy on the effective date, or any replacement for such a unit or room which results from construction or renovation after that date, except that any hotel room in existence in Atlantic City on June 29, 1991 which was not used or available for use on that date and for at least 10 years prior to that date and which is reconstructed or replaced after the effective date of this amendatory and supplementary act, P.L.1993, c.159, and meets the specifications of a sleeping unit prescribed in section 27 of P.L.1977, c.110 (C.5:12-27) may be included in such calculation, and any replacement which, in the judgment of the commission, is an integral element of a program of neighborhood rehabilitation undertaken by the casino licensee with the approval of the city of Atlantic City may also be included in such calculation.

c. In the case of a casino hotel not in operation prior to or on June 29, 1991, an approved hotel shall contain at least 500 qualifying sleeping units, as defined in section 27 of the "Casino Control Act," P.L.1977, c.110 (C.5:12-27), and a single casino room of not more than 50,000 square feet, except that for each additional 100 qualifying sleeping units above 500, the maximum size of the casino room may be increased by 10,000 square feet, up to a maximum of 200,000 square feet. The calculation of the number of qualifying sleeping units with respect to any such casino hotel shall not include any qualifying sleeping unit or

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other hotel or motel room in existence in Atlantic City on June 29, 1991, whether or not that unit or room was offered or usable for occupancy on that date, or any replacement for such a unit or room which results from construction or renovation after that date, except that any hotel room in existence in Atlantic City on June 29, 1991 which was not used or available for use on that date and for at least 10 years prior to that date and which is reconstructed or replaced after the effective date of this amendatory and supplementary act, P.L.1993, c.159, and meets the specifications of a sleeping unit prescribed in section 27 of P.L.1977, c.110 (C.5:12-27) may be included in such calculation, and any replacement which, in the judgment of the commission, is an integral element of a program of neighborhood rehabilitation undertaken by the casino licensee with the approval of the city of Atlantic City may also be included in such calculation.

d. Once a hotel is initially approved, the commission shall thereafter rely on the certification of the casino licensee with regard to the number of rooms and shall permit rehabilitation, renovation and alteration of any part of the approved hotel even if the rehabilitation, renovation, or alteration will mean that the casino licensee does not temporarily meet the requirements of subsection c. so long as the licensee certifies that the rehabilitation, renovation, or alteration shall be completed within one year.

e. (Deleted by amendment, P.L.1987, c.352).

f. (Deleted by amendment, P.L.1991, c.182).

g. (Deleted by amendment, P.L.1991, c.182).

h. (Deleted by amendment, P.L.1991, c.182).

i. The commission shall not impose any criteria or requirements regarding the contents of the hotel in addition to the criteria and requirements expressly specified in the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.); provided, however, that the commission shall be authorized to require each casino licensee to establish and maintain an approved hotel which is in all respects a superior, first-class facility of exceptional quality which will help restore Atlantic City as a resort, tourist and convention destination.

14. 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) 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 reasonable likelihood of success and efficiency in the particular position involved.

(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.

c. The commission shall endorse upon any license issued hereunder the particular positions as defined by this act or by regulation which the licensee is qualified to hold.

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 30 days or agrees to allow the commission to consider the application in some lesser time;

(3) The information provided by the applicant indicates that the applicant meets the requirements of subsection b. (3) of this section;

(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), (3), 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.

15. 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; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

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. The commission shall endorse upon any license issued hereunder the particular positions as defined by regulation which the licensee is qualified to hold.

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. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming or simulcast wagering activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. In addition, a temporary license may be issued by the commission to a casino employee for the position of slot changeperson if the division has not responded to the application for licensure within 15 days of the filing of the application and if the employee's position involves working with an impressment of \$3,000 or less and no access to any other funds. 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. Positions "directly related to gaming or simulcast wagering activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, simulcast wagering personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino or simulcasting facility.

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.

16. Section 94 of P.L.1977, c.110 (C.5:12-94) is amended to read as follows:

C.5:12-94 Approval and denial of registrations and licenses other than casino licenses.

94. Approval and Denial of Registrations and Licenses Other Than Casino Licenses. a. Upon the filing of an application for any license or registration required by this act, other than a casino license, and after submission of such supplemental information as the commission may require, the commission shall request the division to conduct such investigation into the qualification of the applicant, and the commission shall conduct such hearings concerning the qualification of the applicant, in accordance with its regulations, as may be necessary to determine qualification for such license or registration.

b. After such investigation, the commission may either deny the application or grant a license to or accept the registration of

an applicant whom it determines to be qualified to hold such license or registration.

c. The commission shall have the authority to deny any application pursuant to the provisions of this act. When an application is denied, the commission shall prepare and file its order denying such application with the general reasons therefor, and if requested by the applicant, shall further prepare and file a statement of the reasons for the denial, including the specific findings of fact.

d. When the commission grants an application, the commission may limit or place such restrictions thereupon as it may deem necessary in the public interest. A casino hotel employee registration shall, upon issuance, remain in effect unless revoked, suspended, limited, or otherwise restricted by the commission. Licenses may be granted and renewed as follows:

(1) All casino employee licenses, gaming school resident director, instructor, principal employee and sales representative licenses, casino service industry licenses issued pursuant to subsection c. of section 92 of P.L.1977, c.110 (C.5:12-92), and junket representative and junket enterprise licenses issued pursuant to section 102 of P.L.1977, c.110 (C.5:12-102) shall be issued for an initial term of three years, and may be renewed for subsequent terms of four years each; and

(2) All casino key employee licenses and casino service industry licenses required pursuant to subsection a. of section 92 of P.L.1977, c.110 (C.5:12-92) shall be issued for an initial term of two years, and may be renewed for subsequent terms of two years each.

Notwithstanding the foregoing, the commission shall reconsider the granting of any license or the approval of any registration at any time at the request of the division.

e. After an application is submitted to the commission, final action of the commission shall be taken within 90 days after completion of all hearings and investigations and the receipt of all information required by the commission.

17. Section 96 of P.L.1977, c.110 (C.5:12-96) is amended to read as follows:

C.5:12-96 Operation certificate.

96. Operation Certificate. a. Notwithstanding the issuance of a license therefor, no casino or simulcasting facility may be opened or remain open to the public, and no gaming or simulcast wagering activity, except for test purposes, may be conducted therein, unless

and until a valid operation certificate has been issued to the casino licensee by the commission. Such certificate shall be issued by the commission upon a finding that a casino and, if applicable, a simulcasting facility each complies in all respects with the requirements of this act and regulations promulgated hereunder, that the casino licensee has implemented necessary management controls and security precautions for the efficient operation of the casino and, if applicable, the simulcasting facility, that casino and simulcasting facility personnel are properly trained and licensed for the efficient performance of their respective responsibilities, and that the casino and any applicable simulcasting facility are prepared in all respects to receive and entertain the public.

b. The operation certificate shall include a statement of compliance with subsection a. of this section and an itemized list by category and number of the authorized games permitted in the particular casino establishment and any applicable simulcasting facility.

c. A casino licensee shall, in accordance with regulations promulgated by the commission, file any changes in the number of authorized games to be played in its casino or simulcasting facility, and any changes in the configuration of the casino or simulcasting facility, with the commission and the division, which shall review the changes for compliance with the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.) or regulations promulgated thereunder.

d. An operation certificate shall remain in force and effect unless altered in accordance with subsection c. of this section, or revoked, suspended, limited, or otherwise altered by the commission in accordance with this act.

e. It shall be an express condition of continued operation under this act that a casino licensee shall maintain all books, records, and documents pertaining to the licensee's operations, including casino simulcasting, and approved hotel in a manner and location within this State approved by the commission. All such books, records and documents shall be immediately available for inspection during all hours of operation in accordance with the rules of the commission and shall be maintained for such period of time as the commission shall require.

18. Section 98 of P.L.1977, c.110 (C.5:12-98) is amended to read as follows:

C.5:12-98 Casino facility requirements.

98. Casino Facility Requirements. a. Each casino licensee shall arrange the facilities of its casino and, if appropriate, its simul-

casting facility in such a manner as to promote maximum comfort for the patrons and optimum security for the casino and simulcasting facility operations, and shall comply in all respects with regulations of the commission pertaining thereto.

b. Each casino licensee shall:

(1) Install a closed circuit television system according to specifications approved by the commission, and provide access on the licensed premises to the system or its signal by the commission or the division, in accordance with regulations pertaining thereto;

(2) Establish a single room as its casino; and

(3) Provide that visibility between any two areas, whether or not contiguous, in the casino or in the simulcasting facility may not be obstructed by partitions of any kind which interfere with the ability of the commission or the division to supervise casino or simulcasting facility operations; provided, however, that multi-level casinos otherwise complying with this subsection shall be permitted.

19. Section 99 of P.L.1977, c.110 (C.5:12-99) is amended to read as follows:

C.5:12-99 Internal controls.

99. Internal Controls. a. Each casino licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls for gaming and simulcast wagering operations and a description of any changes thereof. Such submission shall be made at least 60 days before such operations are to commence or at least 60 days before any change in those procedures or controls is to take effect, unless otherwise directed by the commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:

(1) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming and simulcast wagering operations;

(2) Procedures, forms, and, where appropriate, formulas covering the calculation of hold percentages, revenue drop, expense and overhead schedules, complimentary services, junkets, cash equivalent transactions, salary structure and personnel practices;

(3) Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in casino or simulcasting facility operations and identifying primary and secondary supervisory positions for

areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor;

(4) Procedures within the cashier's cage and simulcast facility for the receipt, storage and disbursal of chips, cash, and other cash equivalents used in gaming and simulcast wagering; the cashing of checks; the redemption of chips and other cash equivalents used in gaming and simulcast wagering; the pay-off of jackpots and simulcast wagers; and the recording of transactions pertaining to gaming and simulcast wagering operations;

(5) Procedures for the collection and security of moneys at the gaming tables and in the simulcasting facility;

(6) Procedures for the transfer and recordation of chips between the gaming tables and the cashier's cage and the transfer and recordation of moneys within the simulcasting facility;

(7) Procedures for the transfer of moneys from the gaming tables to the counting process and the transfer of moneys within the simulcasting facility for the counting process;

(8) Procedures and security for the counting and recordation of revenue;

(9) Procedures for the security, storage and recordation of cash, chips and other cash equivalents utilized in the gaming and simulcast wagering operations;

(10) Procedures for the transfer of moneys or chips from and to the slot machines;

(11) Procedures and standards for the opening and security of slot machines;

(12) Procedures for the payment and recordation of slot machine jackpots;

(13) Procedures for the cashing and recordation of checks exchanged by casino and simulcasting facility patrons;

(14) Procedures governing the utilization of the private security force within the casino and simulcasting facility;

(15) Procedures and security standards for the handling and storage of gaming apparatus including cards, dice, machines, wheels and all other gaming equipment;

(16) Procedures and rules governing the conduct of particular games and simulcast wagering and the responsibility of casino personnel in respect thereto; and

(17) Procedures for separately recording all transactions pursuant to section 101 of this act involving the Governor, any State officer or employee, or any special State officer or employee, any member of the Judiciary, any member of the Legislature, any

officer of a municipality or county in which casino gaming is authorized, or any gaming related casino employee, and for the quarterly filing with the Attorney General of a list reporting all such transactions.

If required by regulation of the commission, each casino licensee shall also submit a description of its system of internal procedures and administrative and accounting controls for non-gaming operations and a description of any changes thereto no later than five days after those operations commence or after any change in those procedures or controls takes effect.

b. The commission shall review each submission required by subsection a. hereof, and shall determine whether it conforms to the requirements of this act and to the regulations promulgated thereunder and whether the system submitted provides adequate and effective controls for the operations of the particular casino hotel submitting it. If the commission finds any insufficiencies, it shall specify same in writing to the casino licensee, who shall make appropriate alterations. When the commission determines a submission to be adequate in all respects, it shall notify the casino licensee of same. No casino licensee shall commence or alter gaming operations unless and until such system of controls is approved by the commission.

20. Section 100 of P.L.1977, c.110 (C.5:12-100) is amended to read as follows:

C.5:12-100 Games and gaming equipment.

100. Games and Gaming Equipment. a. This act shall not be construed to permit any gaming except the conduct of authorized games in a casino room in accordance with this act and the regulations promulgated hereunder and in a simulcasting facility to the extent provided by the "Casino Simulcasting Act," P.L.1992, c.19 (C.5:12-191 et al.).

b. Gaming equipment shall not be possessed, maintained or exhibited by any person on the premises of a casino hotel complex except in the casino room, in the simulcasting facility, or in restricted casino areas used for the inspection, repair or storage of such equipment and specifically designated for that purpose by the casino licensee with the approval of the commission. Gaming equipment which supports the conduct of gaming in the casino or simulcasting facility but does not permit or require patron access, such as computers, may be possessed and maintained by a casino licensee in restricted casino areas specifically designated for that purpose by the casino licensee with the approval of the commis-

sion. No gaming equipment shall be possessed, maintained, exhibited, brought into or removed from a casino room or simulcasting facility by any person unless such equipment is necessary to the conduct of an authorized game, has permanently affixed, imprinted, impressed or engraved thereon an identification number or symbol authorized by the commission, is under the exclusive control of a casino licensee or his employees, and is brought into or removed from the casino room or simulcasting facility at times authorized for that purpose by the commission or at other times when prior notice has been given to and written approval granted by an authorized agent of the commission.

Notwithstanding the foregoing, a person may, with the prior approval of the commission and under such terms and conditions as may be required by the commission, possess, maintain or exhibit gaming equipment in any other area of the casino hotel complex; provided such equipment is used for nongaming purposes.

c. Each casino hotel shall contain a count room and such other secure facilities as may be required by the commission for the counting and storage of cash, coins, tokens and checks received in the conduct of gaming and for the inspection, counting and storage of dice, cards, chips and other representatives of value. All drop boxes and other devices wherein cash, coins, or tokens are deposited at the gaming tables or in slot machines, and all areas wherein such boxes and devices are kept while in use, shall be equipped with two locking devices, one key to which shall be under the exclusive control of the commission and the other under the exclusive control of the casino licensee, and said drop boxes and other devices shall not be brought into or removed from the casino room or simulcasting facility, or locked or unlocked, except at such times, in such places, and according to such procedures as the commission may require.

d. All chips used in gaming shall be of such size and uniform color by denomination as the commission shall require by regulation.

e. All gaming shall be conducted according to rules promulgated by the commission. All wagers and pay-offs of winning wagers shall be made according to rules promulgated by the commission, which shall establish such limitations as may be necessary to assure the vitality of casino operations and fair odds to and maximum participation by patrons. Each slot machine shall have a minimum payout of 83%.

f. Each casino licensee shall make available in printed form to any patron upon request the complete text of the rules of the com-

mission regarding games and the conduct of gaming, pay-offs of winning wagers, an approximation of the odds of winning for each wager, and such other advice to the player as the commission shall require. Each casino licensee shall prominently post within the casino room and simulcasting facility, as appropriate, according to regulations of the commission such information about gaming rules, pay-offs of winning wagers, the odds of winning for each wager, and such other advice to the player as the commission shall require.

g. Each gaming table shall be equipped with a sign indicating the permissible minimum and maximum wagers pertaining thereto. It shall be unlawful for a casino licensee to require any wager to be greater than the stated minimum or less than the stated maximum; provided, however, that any wager actually made by a patron and not rejected by a casino licensee prior to the commencement of play shall be treated as a valid wager.

h. (1) No slot machine shall be used to conduct gaming unless it is identical in all electrical, mechanical and other aspects to a model thereof which has been specifically tested by the division and licensed for use by the commission. The commission shall, by regulation, establish such technical standards for licensure, including mechanical and electrical reliability, security against tampering, the comprehensibility of wagering, and noise and light levels, as it may deem necessary to protect the player from fraud or deception and to insure the integrity of gaming. The denominations of such machines shall be set by the licensee, subject to the prior approval of the commission.

(2) The commission shall, by regulation, determine the permissible number and density of slot machines in a licensed casino so as to:

- (a) promote optimum security for casino operations;
- (b) avoid deception or frequent distraction to players at gaming tables;
- (c) promote the comfort of patrons;
- (d) create and maintain a gracious playing environment in the casino; and
- (e) encourage and preserve competition in casino operations by assuring that a variety of gaming opportunities is offered to the public.

i. (Deleted by amendment, P.L.1991, c.182).

j. (Deleted by amendment, P.L.1991, c.182).

k. It shall be unlawful for any person to exchange or redeem chips for anything whatsoever, except for currency, negotiable personal checks, negotiable counter checks, other chips, coupons or similar complimentary vouchers distributed pursuant to a pro-

gram approved by the commission or maintained pursuant to commission regulation, or, if authorized by regulation of the commission, a valid charge to a credit card account. A casino licensee shall, upon the request of any person, redeem that licensee's gaming chips surrendered by that person in any amount over \$25.00 with a check drawn upon the licensee's account at any banking institution in this State and made payable to that person.

l. It shall be unlawful for any casino licensee or its agents or employees to employ, contract with, or use any shill or barker to induce any person to enter a casino or simulcasting facility or play at any game or for any purpose whatsoever.

m. It shall be unlawful for a dealer in any authorized game in which cards are dealt to deal cards by hand or other than from a device specifically designed for that purpose, unless otherwise permitted by the rules of the commission.

n. It shall be unlawful for any casino key employee, other than a junket representative, or any person who is required to hold a casino key employee license as a condition of employment or qualification to wager in any casino or simulcasting facility in this State, or any casino employee, other than a bartender, waiter, waitress, or other casino employee who, in the judgment of the commission, is not directly involved with the conduct of gaming operations, to wager in the casino or simulcasting facility in the casino hotel in which the employee is employed or in any other casino or simulcasting facility in this State which is owned or operated by the same casino licensee. Any casino employee, other than a bartender, waiter, waitress, or other casino employee who, in the judgment of the commission, is not directly involved with the conduct of gaming operations, must wait at least 30 days following the date that the employee either leaves employment with a casino licensee or is terminated from employment with a casino licensee before the employee may gamble in the casino or simulcasting facility in the casino hotel in which the employee was formerly employed or in any other casino or simulcasting facility in this State which is owned or operated by the same casino licensee.

o. (1) It shall be unlawful for any casino key employee or boxman, floorman, or any other casino employee who shall serve in a supervisory position to solicit or accept, and for any other casino employee to solicit, any tip or gratuity from any player or patron at the casino or simulcasting facility where he is employed.

(2) A dealer may accept tips or gratuities from a patron at the table at which such dealer is conducting play, subject to the pro-

visions of this subsection. All such tips or gratuities shall be immediately deposited in a lockbox reserved for that purpose, accounted for, and placed in a pool for distribution pro rata among the dealers, with the distribution based upon the number of hours each dealer has worked.

21. Section 101 of P.L.1977, c.110 (C.5:12-101) is amended to read as follows:

C.5:12-101 Credit.

101. Credit. a. Except as otherwise provided in this section, no casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall:

(1) Cash any check, make any loan, or otherwise provide or allow to any person any credit or advance of anything of value or which represents value to enable any person to take part in gaming or simulcast wagering activity as a player; or

(2) Release or discharge any debt, either in whole or in part, or make any loan which represents any losses incurred by any player in gaming or simulcast wagering activity, without maintaining a written record thereof in accordance with the rules of the commission.

b. No casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, may accept a check, other than a recognized traveler's check or other cash equivalent from any person to enable such person to take part in gaming or simulcast wagering activity as a player, or may give cash or cash equivalents in exchange for such check unless:

(1) The check is made payable to the casino licensee;

(2) The check is dated, but not postdated;

(3) The check is presented to the cashier or the cashier's representative at a location in the casino approved by the commission and is exchanged for cash or slot tokens which total an amount equal to the amount for which the check is drawn, or the check is presented to the cashier's representative at a gaming table in exchange for chips which total an amount equal to the amount for which the check is drawn; and

(4) The regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents.

Nothing in this subsection shall be deemed to preclude the establishment of an account by any person with a casino licensee

by a deposit of cash, recognized traveler's check or other cash equivalent, or a check which meets the requirements of subsection g. of this section, or to preclude the withdrawal, either in whole or in part, of any amount contained in such account.

c. When a casino licensee or other person licensed under this act, or any person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, cashes a check in conformity with the requirements of subsection b. of this section, the casino licensee shall cause the deposit of such check in a bank for collection or payment within (1) seven calendar days of the date of the transaction for a check in an amount of \$1,000.00 or less; (2) 14 calendar days of the date of the transaction for a check in an amount greater than \$1,000.00 but less than or equal to \$5,000.00; or (3) 45 calendar days of the date of the transaction for a check in an amount greater than \$5,000.00. Notwithstanding the foregoing, the drawer of the check may redeem the check by exchanging cash, cash equivalents, chips, or a check which meets the requirements of subsection g. of this section in an amount equal to the amount for which the check is drawn; or he may redeem the check in part by exchanging cash, cash equivalents, chips, or a check which meets the requirements of subsection g. of this section and another check which meets the requirements of subsection b. of this section for the difference between the original check and the cash, cash equivalents, chips, or check tendered; or he may issue one check which meets the requirements of subsection b. of this section in an amount sufficient to redeem two or more checks drawn to the order of the casino licensee. If there has been a partial redemption or a consolidation in conformity with the provisions of this subsection, the newly issued check shall be delivered to a bank for collection or payment within the period herein specified. No casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall accept any check or series of checks in redemption or consolidation of another check or checks in accordance with this subsection for the purpose of avoiding or delaying the deposit of a check in a bank for collection or payment within the time period prescribed by this subsection.

In computing a time period prescribed by this subsection, the last day of the period shall be included unless it is a Saturday, Sunday, or a State or federal holiday, in which event the time period shall run until the next business day.

d. No casino licensee or any other person licensed under this act, or any other person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, shall transfer, convey, or give, with or without consideration, a check cashed in conformity with the requirements of this section to any person other than:

(1) The drawer of the check upon redemption or consolidation in accordance with subsection c. of this section;

(2) A bank for collection or payment of the check; or

(3) A purchaser of the casino license as approved by the commission. The limitation on transferability of checks imposed herein shall apply to checks returned by any bank to the casino licensee without full and final payment.

e. No person other than one licensed as a casino key employee or as a casino employee may engage in efforts to collect upon checks that have been returned by banks without full and final payment, except that an attorney-at-law representing a casino licensee may bring action for such collection.

f. Notwithstanding the provisions of any law to the contrary, checks cashed in conformity with the requirements of this act shall be valid instruments, enforceable at law in the courts of this State. Any check cashed, transferred, conveyed or given in violation of this act shall be invalid and unenforceable for the purposes of collection but shall be included in the calculation of gross revenue pursuant to section 24 of P.L.1977, c.110 (C.5:12-24).

g. Notwithstanding the provisions of subsection b. of this section to the contrary, a casino licensee may accept a check from a person to enable the person to take part in gaming or simulcast wagering activity as a player, may give cash or cash equivalents in exchange for such a check, or may accept a check in redemption or partial redemption of a check issued in accordance with subsection b., provided that:

(1) (a) The check is drawn by a casino licensee pursuant to the provisions of subsection k. of section 100 of P.L.1977, c.110 (C.5:12-100) or upon a withdrawal of funds from an account established in accordance with the provisions of subsection b. of this section or is drawn by a casino licensee for winnings from slot machine payoffs or simulcast wagers;

(b) The check is issued by a banking institution which is chartered in a country other than the United States on its account at a federally chartered or state-chartered bank and is made payable to "cash," "bearer," a casino licensee, or the person presenting the check; or

(c) The check is issued by a banking institution which is chartered in the United States on its account at another federally chartered or state-chartered bank and is made payable to "cash," "bearer," a casino licensee, or the person presenting the check;

(2) The check is identifiable in a manner approved by the commission as a check issued for a purpose listed in paragraph (1) of this subsection;

(3) The check is dated, but not postdated;

(4) The check is presented to the cashier or the cashier's representative by the original payee and its validity is verified by the drawer in the case of a check drawn pursuant to subparagraph (a) of paragraph (1) of this subsection, or the check is verified in accordance with regulations promulgated by the commission in the case of a check issued pursuant to subparagraph (b) or subparagraph (c) of paragraph (1) of this subsection; and

(5) The regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents.

No casino licensee shall issue a check for the purpose of making a loan or otherwise providing or allowing any advance or credit to a person to enable the person to take part in gaming or simulcast wagering activity as a player.

h. (1) Notwithstanding the provisions of subsection b. and subsection c. of this section to the contrary, a casino licensee may, at a location outside the casino, accept a personal check or checks from a person for up to \$1,500 in exchange for cash or cash equivalents, and may, at such locations within the casino as may be permitted by the commission, accept a personal check or checks for up to \$1,500 in exchange for cash, cash equivalents, tokens, chips, or plaques to enable the person to take part in gaming or simulcast wagering activity as a player, provided that:

(a) The check is drawn on the patron's bank or brokerage cash management account;

(b) The check is for a specific amount;

(c) The check is made payable to the casino licensee;

(d) The check is dated but not post-dated;

(e) The patron's identity is established by examination of one of the following: valid credit card, driver's license, passport, or other form of identification credential which contains, at a minimum, the patron's signature;

(f) The check is restrictively endorsed "For Deposit Only" to the casino licensee's bank account and deposited on the next banking day following the date of the transaction; and

(g) The total amount of personal checks accepted by any one licensee pursuant to this subsection that are outstanding at any time, including the current check being submitted, does not exceed \$1,500.

(2) Nothing in paragraph (1) of this subsection shall be construed to limit the authority of a casino licensee to accept, and exchange for cash or cash equivalents other than tokens, chips, or plaques, a check from a patron that is not offered or exchanged in order to enable the patron or anyone else to take part in gaming or simulcast wagering activity as a player, provided that:

(a) The patron so certifies;

(b) The casino licensee has no reason to believe that the cash or cash equivalents will be used to enable the patron or anyone else to take part in gaming or simulcast wagering activity as a player;

(c) The check is not accepted or exchanged in the casino or simulcasting facility; and

(d) The casino licensee maintains full documentation of the transaction in accordance with regulations established by the commission.

i. Checks cashed pursuant to the provisions of paragraph (1) of subsection h. of this section which are subsequently uncollectible may not be deducted from the total of all sums received in calculating gross revenue pursuant to section 24 of P.L.1977, c.110 (C.5:12-24).

j. A person may request the commission to put that person's name on a list of persons to whom the extension of credit by a casino as provided in this section would be prohibited by submitting to the commission the person's name, address, and date of birth. The person does not need to provide a reason for this request. The commission shall provide this list to the credit department of each casino; neither the commission nor the credit department of a casino shall divulge the names on this list to any person or entity other than those provided for in this subsection. If such a person wishes to have that person's name removed from the list, the person shall submit this request to the commission, which shall so inform the credit departments of casinos no later than three days after the submission of the request.

22. Section 103 of P.L.1977, c.110 (C.5:12-103) is amended to read as follows:

C.5:12-103 Alcoholic beverages in casino hotel facilities.

103. Alcoholic Beverages in Casino Hotel Facilities.

a. Notwithstanding any law to the contrary, the authority to grant any license for, or to permit or prohibit the presence of,

alcoholic beverages in, on, or about any premises licensed as part of a casino hotel shall exclusively be vested in the commission.

b. Unless otherwise stated, and except where inconsistent with the purpose or intent of this act or the common understanding of usage thereof, definitions contained in Title 33 of the Revised Statutes shall apply to this section. Any definition contained therein shall apply to the same word in any form.

c. Notwithstanding any provision of Title 33 of the Revised Statutes, the rules, regulations and bulletins promulgated by the director of the Division of Alcoholic Beverage Control, or any provision promulgated by any local authority, the authority to issue, renew, transfer, revoke or suspend a Casino Hotel Alcoholic Beverage License or any portion, location, privilege or condition thereof; to fine or penalize a Casino Hotel Alcoholic Beverage Licensee; to enforce all statutes, laws, rulings, or regulations relating to such license; and to collect license fees and establish application standards therefor, shall be, consistent with this act, exclusively vested in the commission or the division.

d. Except as otherwise provided in this section, the provisions of Title 33 of the Revised Statutes and the rules, regulations and bulletins promulgated by the Director of the Division of Alcoholic Beverage Control shall apply to a Casino Hotel and Casino Hotel Alcoholic Beverage Licensee licensed under this act.

e. Notwithstanding any provision to the contrary, the commission may promulgate any regulations and special rulings and findings as may be necessary for the proper enforcement, regulation, and control of alcoholic beverages in casino hotels when the commission finds that the uniqueness of casino operations and the public interest require that such regulations, rulings, and findings are appropriate. Regulations of the commission may include but are not limited to: designation and duties of enforcement personnel; all forms necessary or convenient in the administration of this section; inspections, investigations, searches, seizures; licensing and disciplinary standards; requirements and standards for any hearings or disciplinary or other proceedings that may be required from time to time; the assessment of fines or penalties for violations; hours of sale; sales in original containers; sales on credit; out-of-door sales; limitations on sales; gifts and promotional materials; locations or places for sale; control of signs and other displays; identification of licensees and their employees; employment of aliens and minors; storage, transportation and sanitary requirements; records to be kept by the Casino Hotel

Alcoholic Beverage Licensees and availability thereof; practices unduly designed to increase consumption of alcoholic beverages; and such other matters whatsoever as are or may become necessary and consistent with the administration of this act.

f. (1) It shall be unlawful for any person, including any casino licensee or any of its lessees, agents or employees, to expose for sale, solicit or promote the sale of, possess with intent to sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages in, on or about any portion of the premises of a casino hotel, unless said person possesses a Casino Hotel Alcoholic Beverage License.

(2) It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the Director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

g. In issuing a Casino Hotel Alcoholic Beverage License the commission shall describe the scope of the particular license and the restrictions and limitations thereon as it deems necessary and reasonable. The commission may, in a single Casino Hotel Alcoholic Beverage License, permit the holder of such a license to perform any or all of the following activities, subject to applicable laws, rules and regulations:

(1) To sell any alcoholic beverage by the glass or other open receptacle, but not in an original container, for on-premise consumption within a casino or simulcasting facility; provided, however, that no alcoholic beverage shall be sold, given or be available for consumption; offered, delivered or otherwise brought to a patron; or consumed at a gaming table unless so requested by the patron.

(2) To sell any alcoholic beverage by the glass or other open receptacle for on-premise consumption within a casino hotel, but not in a casino or simulcasting facility, or from a fixed location outside a building or structure containing a casino but on a casino hotel premises.

(3) To sell any alcoholic beverage in original containers for consumption outside the licensed area from an enclosed package room not in a casino or simulcasting facility.

(4) To sell any alcoholic beverage by the glass or other open receptacle or in original containers from a room service location within an enclosed room not in a casino or simulcasting facility; pro-

vided, however, that any sale of alcoholic beverages is delivered only to a guest room or to any other room in the casino hotel authorized by the commission, other than any room authorized by the commission pursuant to paragraph (1), (3), or (5) of this subsection.

(5) To possess or to store alcoholic beverages in original containers intended but not actually exposed for sale at a fixed location on a casino hotel premises, not in a casino or simulcasting facility; and to transfer or deliver such alcoholic beverages only to a location approved pursuant to this section; provided, however, that no access to or from a storage location shall be permitted except during the normal course of business by employees or agents of the licensee, or by licensed employees or agents of wholesalers or distributors licensed pursuant to Title 33 of the Revised Statutes and any applicable rules and regulations; and provided further, however, that no provision of this section shall be construed to prohibit a Casino Hotel Alcoholic Beverage Licensee from obtaining an off-site storage license from the Division of Alcoholic Beverage Control.

h. (1) No Casino Hotel Alcoholic Beverage License which authorizes the sale of alcoholic beverages within a casino pursuant to subsection g.(1) of this section shall issue to any applicant who does not hold a casino license issued pursuant to this act.

(2) No Casino Hotel Alcoholic Beverage License which authorizes the possession, sale or storage of alcoholic beverages pursuant to subsection g.(2), (3), (4), or (5) of this section shall issue to any applicant who would not qualify under the standards for licensure of a casino service industry pursuant to subsection c. of section 92 of P.L.1977, c.110 (C.5:12-92).

(3) No Casino Hotel Alcoholic Beverage License which authorizes the possession or storage of alcoholic beverages pursuant to subsection g. of this section shall issue to any applicant who does not hold a Casino Hotel Alcoholic Beverage License, permitting any activity pursuant to subsection g.(1), (2), (3), or (4) of this section.

i. The commission may revoke, suspend, refuse to renew or refuse to transfer any Casino Hotel Alcoholic Beverage License, or fine or penalize any Casino Hotel Alcoholic Beverage Licensee for violations of any provision of Title 33 of the Revised Statutes, the rules and regulations promulgated by the Director of the Division of Alcoholic Beverage Control, and the regulations promulgated by the commission.

j. Jurisdiction over all alcoholic beverage licenses previously issued with respect to the casino hotel facility is hereby vested in

the commission, which in its discretion may by regulation provide for the conversion thereof into a Casino Hotel Alcoholic Beverage License as provided in this section.

23. Section 104 of P.L.1977, c.110 (C.5:12-104) is amended to read as follows:

C.5:12-104 Casino licensee -- leases and contracts.

104. Casino Licensee--Leases and Contracts. a. (1) Unless otherwise provided in this subsection, no agreement which provides for the payment, however defined, of any direct or indirect interest, percentage or share of any money or property gambled at a casino or simulcasting facility or derived from casino gaming activity or wagering at a simulcasting facility of any such interest, percentage, or share of any revenues, profits or earnings of a casino or simulcasting facility shall be lawful.

(2) Agreements which provide only for the payment of a fixed sum which is in no way affected by the amount of any such money, property, revenues, profits or earnings shall not be subject to the provisions of this subsection; and receipts, rentals or charges for real property, personal property or services shall not lose their character as payments of a fixed sum because of contract, lease, or license provisions for adjustments in charges, rentals or fees on account of changes in taxes or assessments, cost-of-living index escalations, expansion or improvement of facilities, or changes in services supplied.

(3) Agreements between a casino licensee and its employees which provide for casino employee or casino key employee profit sharing and which are in writing and have been filed with the commission shall be lawful and effective only if expressly approved as to their terms by the commission.

(4) Agreements to lease an approved hotel building or the land thereunder and agreements for the complete management of a casino shall not be subject to the provisions of this subsection but shall rather be subject to the provisions of subsections b. and c. of section 82 of this act.

(5) Agreements which provide for percentage charges between the casino licensee and a holding company or intermediary company of the casino licensee shall be in writing and filed with the commission but shall not be subject to the provisions of this subsection.

(6) Agreements relating to simulcast racing and wagering between a casino licensee and an in-State or out-of-State sending track

licensed or exempt from licensure in accordance with subsection c. of section 92 of P.L.1977, c.110 (C.5:12-92) shall be in writing, be filed with the commission, and be lawful and effective only if expressly approved as to their terms by the commission and the New Jersey Racing Commission, except that any such agreements which provide for a percentage of the parimutuel pool wagered at a simulcasting facility to be paid to the sending track shall not be subject to the provisions of paragraph (1) of this subsection.

(7) Agreements relating to simulcast racing and wagering between a casino licensee and a casino service industry licensed pursuant to the provisions of subsection a. of section 92 of P.L.1977, c.110 (C.5:12-92) as a hub facility, as defined in joint regulations of the Casino Control Commission and the New Jersey Racing Commission, shall be in writing, be filed with the commission, and be lawful and effective only if expressly approved as to their terms by the commission and the New Jersey Racing Commission, except that any such agreements which provide for a percentage of the casino licensee's share of the parimutuel pool wagered at a simulcasting facility to be paid to the hub facility shall not be subject to the provisions of paragraph (1) of this subsection.

(8) Agreements relating to simulcast racing and wagering between a casino licensee and a casino service industry licensed pursuant to the provisions of subsection a. of section 92 of P.L.1977, c.110 (C.5:12-92) to conduct casino simulcasting in a simulcasting facility shall be in writing, be filed with the commission, and be lawful and effective only if expressly approved as to their terms by the commission, except that any such agreements which provide for a percentage of the casino licensee's share of the parimutuel pool wagered at a simulcasting facility to be paid to the casino service industry shall not be subject to the provisions of paragraph (1) of this subsection.

b. Each casino applicant or licensee shall maintain, in accordance with the rules of the commission, a record of each written or unwritten agreement regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility. The foregoing obligation shall apply regardless of whether the casino applicant or licensee is a party to the agreement. Any such agreement may be reviewed by the commission on the basis of the reasonableness of its terms, including the terms of compensation, and of the qualifications of the owners, officers, employees, and directors of any enterprise involved in the agreement, which qualifications shall be reviewed according to the standards enumerated in section 86 of this act. If the com-

mission disapproves such an agreement or the owners, officers, employees, or directors of any enterprise involved therein, the commission may require its termination.

Every agreement required to be maintained, and every related agreement the performance of which is dependent upon the performance of any such agreement, shall be deemed to include a provision to the effect that, if the commission shall require termination of an agreement pursuant to this subsection, such termination shall occur without liability on the part of the casino applicant or licensee or any qualified party to the agreement or any related agreement. Failure expressly to include such a provision in the agreement shall not constitute a defense in any action brought to terminate the agreement. If the agreement is not maintained or presented to the commission in accordance with commission regulations, or the disapproved agreement is not terminated, the commission may pursue any remedy or combination of remedies provided in this act.

For the purposes of this subsection, "casino applicant" includes any person required to hold a casino license pursuant to section 82 of P.L.1977, c.110 (C.5:12-82) who has applied to the commission for a casino license or any approval required under P.L.1977, c.110 (C.5:12-1 et seq.).

c. Nothing in this act shall be deemed to permit the transfer of any license, or any interest in any license, or any certificate of compliance or any commitment or reservation.

24. Section 106 of P.L.1977, c.110 (C.5:12-106) is amended to read as follows:

C.5:12-106 Casino employment.

106. Casino Employment. a. A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment.

b. A casino licensee shall, within 24 hours of receipt of written or electronically transferred notice thereof, terminate the appointment or employment of any person whose license or registration has been revoked or has expired. A casino licensee shall comply in all respects with any order of the commission imposing limitations or restrictions upon the terms of employment or appointment in the course of any investigation or hearing.

25. Section 107 of P.L.1977, c.110 (C.5:12-107) is amended to read as follows:

C.5:12-107 Conduct of hearings; rules of evidence; punishment of contempts; rehearing.

107. Conduct of Hearings; Rules of Evidence; Punishment of Contempts; Rehearing. a. At all hearings of the commission in contested cases, as defined in section 2 of P.L.1968, c.410 (C.52:14B-2):

(1) Unless the commission hears the matter directly, the chairman shall refer the matter to the Office of Administrative Law in accordance with P.L.1978, c.67 (C.52:14F-1 et al.); provided, however, that the chairman may, in his discretion, designate a member of the commission, or other qualified person other than an employee of the commission, to serve as hearing examiner in a particular matter;

(2) The proceedings at the hearing shall be recorded or transcribed;

(3) Oral evidence shall be taken only upon oath or affirmation;

(4) Each party to a hearing shall have the right to call and examine witnesses; to introduce exhibits relevant to the issues of the case, including the transcript of testimony at any investigative hearing conducted by or on behalf of the commission; to cross-examine opposing witnesses in any matters relevant to the issue of the case; to impeach any witness, regardless of which party called him to testify; and to offer rebuttal evidence;

(5) If an applicant, licensee, registrant or person who shall be qualified pursuant to this act is a party and if such party shall not testify in his own behalf, he may be called and examined as if under cross-examination;

(6) The hearing shall not be conducted according to rules relating to the admissibility of evidence in courts of law. Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action; and

(7) The parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted, although such evidence may be otherwise subject to objection.

b. The commission may take official notice of any generally accepted information or technical or scientific matter in the field of gaming and of any other fact which may be judicially noticed by the courts of this State. The parties shall be informed of any

information, matters or facts so noticed and shall be given a reasonable opportunity, on request, to refute such information, matters or facts by evidence or by written or oral presentation of authorities, the manner of such refutation to be determined by the commission. The commission may, in its discretion, before rendering its decision, permit the filing of amended or supplemental pleadings and shall notify all parties thereof and provide a reasonable opportunity for objections thereto.

c. If any person in proceedings before the commission disobeys or resists any lawful order, refuses to respond to a subpoena, refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct at the hearing or so near the place thereof as to obstruct the proceeding, the person may be punished for contempt in accordance with the Rules of Court if the commission certifies the facts underlying the contumacious behavior to the Superior Court. Thereafter, the courts shall have jurisdiction in the matter, and the same proceeding shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed contempt in the trial of a civil action before the Superior Court.

d. (1) The commission may, upon motion therefor made within 10 days after the service of the decision and order, order a rehearing before the commission upon such terms and conditions as it may deem just and proper when the commission finds cause to believe that the decision and order should be reconsidered in view of the legal, policy or factual matters advanced by the moving party or raised by the commission on its own motion.

(2) Upon motion made within a reasonable time, but in no event later than one year from the service of the decision and order, the commission may relieve a party from the decision and order upon a showing that there is additional evidence which is material and necessary and which would be reasonably likely to change the decision of the commission, and that sufficient reason existed for failure to present such evidence at the hearing of the commission or on a motion under paragraph (1) of this subsection. The motion shall be supported by an affidavit of the moving party or his counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not presented at the hearing or on a motion under paragraph (1) of this subsection. Upon rehearing, rebuttal evidence to the additional evidence shall be admitted. After rehearing, the

commission may modify its decision and order as the additional evidence may warrant.

(3) A motion for relief from a decision and order which is based on any ground other than the presentation of newly discovered evidence shall be governed as to both timeliness and sufficiency by the regulations of the commission which shall be modeled, to the extent practical, upon the rules then governing similar motions before the courts of this State.

26. Section 112 of P.L.1977, c.110 (C.5:12-112) is amended to read as follows:

C.5:12-112 Unlicensed casino gambling games unlawful; penalties.

112. Unlicensed Casino Gambling Games Unlawful; Penalties.

a. Any person who violates the provisions of sections 80 or 82 or of Article 7 of this act, or permits any gambling game, slot machine or device to be conducted, operated, dealt or carried on in any casino or simulcasting facility by a person other than a person licensed for such purposes pursuant to this act is guilty of a crime of the fourth degree and subject to the penalties therefor, except that the amount of a fine may be up to \$25,000.00, and in the case of a person other than a natural person, the amount of a fine may be up to \$100,000.00.

b. Any licensee who places games or slot machines into play or displays such games or slot machines in a casino or simulcasting facility without authority of the commission to do so is guilty of a crime of the fourth degree and subject to the penalties therefor, except that the amount of a fine may be up to \$25,000.00, and in the case of a person other than a natural person, the amount of a fine may be up to \$100,000.00.

c. Any person who operates, carries on or exposes for play any gambling game, gaming device or slot machine after his license has expired and prior to the actual renewal thereof is guilty of a crime of the fourth degree and subject to the penalties therefor, except that the amount of a fine may be up to \$25,000.00, and in the case of a person other than a natural person, the amount of a fine may be up to \$100,000.00.

27. Section 113 of P.L.1977, c.110 (C.5:12-113) is amended to read as follows:

C.5:12-113 Swindling and cheating; penalties.

113. Swindling and Cheating; Penalties. a. Except as provided in subsection b., any person who by any trick or sleight of hand

performance, or by a fraud or fraudulent scheme, cards, dice or device, for himself or for another wins or attempts to win money or property or a representative of either or reduces a losing wager or attempts to reduce a losing wager in connection with casino gaming or simulcast wagering is guilty of a crime of the fourth degree and notwithstanding the provisions of N.J.S.2C:43-3 shall be subject to a fine of not more than \$25,000.00, and in the case of a person other than a natural person, to a fine of not more than \$100,000.00 and any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

b. Any person who by any trick or sleight of hand performance, or by fraud or fraudulent scheme, cards, dice or device, for himself or for another wins or attempts to win money or property or a representative of either or reduces a losing wager or attempts to reduce a losing wager in connection with casino gaming or simulcast wagering is guilty of a disorderly persons offense if the value of such money or property or representative of either is \$25.00 or under.

28. Section 46 of P.L.1991, c.182 (C.5:12-113.1) is amended to read as follows:

C.5:12-113.1 Use of certain devices in playing game, disorderly persons offense.

46. A person commits a disorderly persons offense if, in playing a game in a licensed casino or simulcasting facility, the person uses, or assists another in the use of, an electronic, electrical or mechanical device which is designed, constructed, or programmed specifically for use in obtaining an advantage at playing any game in a licensed casino or simulcasting facility. A device used by any person in violation of this section shall be subject to forfeiture pursuant to the provisions of N.J.S.2C:64-1 et seq.

Each casino licensee shall post notice of this prohibition and the penalties of this section in a manner determined by the commission.

29. Section 114 of P.L.1977, c.110 (C.5:12-114) is amended to read as follows:

C.5:12-114 Unlawful use of bogus chips or gaming billets, marked cards, dice, cheating devices, unlawful coins; penalty.

114. Unlawful Use of Bogus Chips or Gaming Billets, Marked Cards, Dice, Cheating Devices, Unlawful Coins; Penalty. a. It shall be unlawful for any person playing any licensed gambling game:

(1) Knowingly to use bogus or counterfeit chips or gaming billets, or knowingly to substitute and use in any such game cards or dice that have been marked, loaded or tampered with; or

(2) Knowingly to use or possess any cheating device with intent to cheat or defraud.

b. It shall be unlawful for any person, playing or using any slot machine in a licensed casino:

(1) Knowingly to use other than a lawful coin or legal tender of the United States of America, or to use coin not of the same denomination as the coin intended to be used in such slot machine, except that in the playing of any slot machine or similar gaming device, it shall be lawful for any person to use gaming billets, tokens or similar objects therein which are approved by the commission; or

(2) To use any cheating or thieving device, including but not limited to tools, drills, wires, coins or tokens attached to strings or wires, or electronic or magnetic devices, to facilitate the alignment of any winning combination or removing from any slot machine any money or other contents thereof.

c. It shall be unlawful for any person knowingly to possess or use while on the premises of a licensed casino, any cheating or thieving device, including but not limited to tools, wires, drills, coins attached to strings or wires or electronic or magnetic devices to facilitate removing from any slot machine any money or contents thereof, except that a duly authorized employee of a licensed casino may possess and use any of the foregoing only in furtherance of his employment in the casino.

d. It shall be unlawful for any person knowingly to possess or use while on the premises of any licensed casino or simulcasting facility any key or device designed for the purpose of or suitable for opening or entering any slot machine or similar gaming device or drop box, except that a duly authorized employee of a licensed casino, of a company authorized to conduct casino simulcasting, or of the commission may possess and use any of the foregoing only in furtherance of his employment.

e. Any person who violates this section is guilty of a crime of the fourth degree and notwithstanding the provisions of N.J.S.2C:43-3 shall be subject to a fine of not more than \$25,000.00, and in the case of a person other than a natural person, to a fine of not more than \$100,000.00 and any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

30. Section 119 of P.L.1977, c.110 (C.5:12-119) is amended to read as follows:

C.5:12-119 Gaming by certain persons prohibited; penalties; defenses.

119. Gaming by Certain Persons Prohibited; Penalties; Defenses. a. No person under the age at which a person is authorized to purchase and consume alcoholic beverages shall enter, or wager in, a licensed casino or simulcasting facility; provided, however, that such a person may enter a casino or simulcasting facility by way of passage to another room, and provided further, however, that any such person who is licensed or registered under the provisions of the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.), may enter a casino or simulcasting facility in the regular course of the person's permitted activities.

b. Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in or wager in a casino or simulcasting facility is guilty of a disorderly persons offense; except that the establishment of all of the following facts by a licensee or employee allowing any such underage person to remain shall constitute a defense to any prosecution therefor:

(1) That the underage person falsely represented in writing that he or she was at or over the age at which a person is authorized to purchase and consume alcoholic beverages;

(2) That the appearance of the underage person was such that an ordinary prudent person would believe him or her to be at or over the age at which a person is authorized to purchase and consume alcoholic beverages; and

(3) That the admission was made in good faith, relying upon such written representation and appearance, and in the reasonable belief that the underage person was actually at or over the age at which a person is authorized to purchase and consume alcoholic beverages.

31. Section 121 of P.L.1977, c.110 (C.5:12-121) is amended to read as follows:

C.5:12-121 Authority of gaming licensee and agents to detain or question persons suspected of cheating; immunity from liability; posted notice required.

121. Authority of Gaming Licensee and Agents to Detain or Question Persons Suspected of Cheating; Immunity from Liability; Posted Notice Required.

a. Any licensee or its officers, employees or agents may question any individual in the casino or simulcasting facility

reasonably suspected of violating any of the provisions of sections 113 through 116 of P.L.1977, c.110 (C.5:12-113 through 116) or of section 46 of P.L.1991, c.182 (C.5:12-113.1). No licensee or its officers, employees or agents shall be criminally or civilly liable by reason of any such questioning.

b. Any licensee or its officers, employees or agents who shall have probable cause for believing there has been a violation of sections 113 through 116 of P.L.1977, c.110 (C.5:12-113 through 116) or of section 46 of P.L.1991, c.182 (C.5:12-113.1) in the casino or simulcasting facility by any person may refuse to permit such person to continue gaming or wagering or may take such person into custody and detain him in the establishment in a reasonable manner for a reasonable length of time, for the purpose of notifying law enforcement or commission authorities. Such refusal or taking into custody and detention shall not render such licensee or its officers, employees or agents criminally or civilly liable for false arrest, false imprisonment, slander or unlawful detention, unless such refusal or such taking into custody or detention is unreasonable under all of the circumstances.

c. No licensee or his officers, employees or agents shall be entitled to any immunity from civil or criminal liability provided in this section unless there is displayed in a conspicuous manner in the casino and, if applicable, the simulcasting facility a notice in bold face type clearly legible and in substantially this form:

“Any gaming licensee or officer, employee or agent thereof who has probable cause for believing that any person is violating any of the provisions of the Casino Control Act prohibiting cheating or swindling in gaming or simulcast wagering may detain such person in the establishment for the purpose of notifying a police officer or Casino Control Commission authorities.”

32. Section 129 of P.L.1977, c.110 (C.5:12-129) is amended to read as follows:

C.5:12-129 Supplemental sanctions.

129. Supplemental Sanctions. In addition to any penalty, fine or term of imprisonment authorized by law, the commission shall, after appropriate hearings and factual determinations, have the authority to impose the following sanctions upon any person licensed or registered pursuant to this act:

(1) Revoke the license or registration of any person for the conviction of any criminal offense under this act or for the commission

of any other offense or violation of this act which would disqualify such person from holding his license or registration;

(2) Revoke the license or registration of any person for willfully and knowingly violating an order of the commission directed to such person;

(3) Suspend the license or registration of any person pending hearing and determination, in any case in which license or registration revocation could result;

(4) Suspend the operation certificate of any casino licensee for violation of any provisions of this act or regulations promulgated hereunder relating to the operation of its casino or, if applicable, its simulcasting facility, or both, including games, internal and accountancy controls and security;

(5) Assess such civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed \$10,000.00 in the case of any individual licensee or registrant, except that in the case of a casino licensee the penalty may not exceed \$50,000.00;

(6) Order restitution of any moneys or property unlawfully obtained or retained by a licensee or registrant;

(7) Enter a cease and desist order which specifies the conduct which is to be discontinued, altered or implemented by the licensee or registrant;

(8) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each licensee or registrant so sanctioned; or

(9) Impose any or all of the foregoing sanctions in combination with each other.

33. Section 132 of P.L.1977, c.110 (C.5:12-132) is amended to read as follows:

C.5:12-132 Legal shipments of gaming devices into New Jersey.

132. Legal Shipments of Gaming Devices into New Jersey. All shipments into this State of gaming devices, including slot machines, the registering, recording and labeling of which has been duly had by the manufacturer or dealer thereof in accordance with sections 3 and 4 of an Act of Congress of the United States entitled "An act to prohibit transportation of gambling devices in interstate and foreign commerce," approved January 2, 1951, being chapter 1194, 64 Stat. 1134, and also designated as 15 U.S.C. (1173-1174), shall be deemed legal shipments thereof into this State.

34. Section 149 of P.L.1977, c.110 (C.5:12-149) is amended to read as follows:

C.5:12-149 Determination of tax liability.

149. Determination of Tax Liability. The commission may perform audits of the books and records of a casino licensee, at such times and intervals as it deems appropriate, for the purpose of determining the sufficiency of tax payments. If a return or deposit required by section 145 with regard to obligations imposed by subsection a. of section 144 of P.L.1977, c.110 (C.5:12-144) is not filed or paid, or if a return or deposit when filed or paid is determined by the commission to be incorrect or insufficient with or without an audit, the amount of tax or deposit due shall be determined by the commission. Notice of such determination shall be given to the licensee liable for the payment of the tax or deposit. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 30 days after receiving notice of such determination, shall apply to the commission for a hearing, or unless the commission on its own motion shall redetermine the same. After such hearing the commission shall give notice of its determination to the person against whom the tax is assessed.

35. Section 150 of P.L.1977, c.110 (C.5:12-150) is amended to read as follows:

C.5:12-150 Penalties.

150. Penalties. a. Any licensee who shall fail to file his return when due or to pay any tax or deposit when the same becomes due, as herein provided, shall be subject to such penalties and interest as provided in the "State Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised Statutes. If the commission determines that the failure to comply with any provision of this Article was excusable under the circumstances, the commission may remit such part or all of the penalty as shall be appropriate under such circumstances.

b. Any person failing to file a return, failing to pay the tax or deposit, or filing or causing to be filed, or making or causing to be made, or giving or causing to be given any return, certificate, affidavit, representation, information, testimony or statement required or authorized by this act, or rules or regulations adopted hereunder which is willfully false, or failing to keep any records required by this act or rules and regulations adopted hereunder,

shall, in addition to any other penalties herein or elsewhere prescribed, be guilty of a crime of the fourth degree and subject to the penalties therefor, except that the amount of a fine may be up to \$100,000.00.

c. Except as to those determinations required to be made by the commission pursuant to section 149 of P.L.1977, c.110 (C.5:12-149), the certificate of the State Treasurer to the effect that a tax or deposit has not been paid, that a return has not been filed, that information has not been supplied, or that inaccurate information has been supplied pursuant to the provisions of this act or rules or regulations adopted hereunder, shall be presumptive evidence thereof.

d. If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50% of the underpayment.

36. Section 8 of P.L.1984, c.218 (C.5:12-156) is amended to read as follows:

C.5:12-156 Compensation of public members; reimbursement.

8. Each appointed and voting public member of the Casino Reinvestment Development Authority other than the chairman shall receive compensation of \$18,000.00 per annum. The compensation of the chairman shall be \$23,000.00 per annum. The casino industry representatives shall not be deemed to be public members and shall not receive this compensation. All members shall be reimbursed for actual expenses necessarily incurred in the discharge of their duties. Notwithstanding the provisions of any other law, no officer or employee of the State shall be deemed to have forfeited or shall forfeit his office or employment, or any benefits or emoluments thereof by reason of his acceptance of the office of an ex officio or appointed member of the Casino Reinvestment Development Authority or his services therein.

37. Section 11 of P.L.1992, c.19 (C.5:12-201) is amended to read as follows:

C.5:12-201 Payment to out-of-State sending track.

11. a. Except as provided in subsection b. of this section, a casino which receives a simulcast horse race from an out-of-State sending track shall not pay the out-of-State sending track for the transmission an amount equal to more than 3% of the parimutuel pool on each race. If the casino negotiates an agreement to pay the out-of-State sending track an amount equal to less than 3% of

the parimutuel pool, the casino shall be entitled to retain the difference between the amount agreed upon and 3%.

b. Subject to the approval of the New Jersey Racing Commission and with respect to no more than 26 races per casino per calendar year, a casino may pay an out-of-State sending track an amount equal to not more than 6% of the parimutuel pool for the transmission of a race. If the casino negotiates an agreement to pay the out-of-State sending track an amount equal to less than 6% of the parimutuel pool, the casino shall be entitled to retain the difference between the amount agreed upon and 6%.

38. Section 4 of P.L.1981, c.142 (C.52:13D-17.2) is amended to read as follows:

C.52:13D-17.2 "Person" defined; conflict of interest; violations; penalty.

4. a. As used in this section "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or any full-time member of the Judiciary; any full-time professional employee of the Office of the Governor, or the Legislature; members of the Casino Reinvestment Development Authority; the head of a principal department; the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment.

b. No State officer or employee, nor any person, nor any member of the immediate family of any State officer or employee, or person, nor any partnership, firm or corporation with which any such State officer or employee or person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm, or corporation, shall hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or

intermediary company with respect thereto, in connection with any cause, application, or matter, except that a member of the immediate family of a State officer or employee, or person, may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the Executive Commission on Ethical Standards, the Joint Legislative Committee on Ethical Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the State officer or employee, or person, and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the State officer or employee, or person. No special State officer or employee without responsibility for matters affecting casino activity, excluding those serving in the Departments of Education, Health, Higher Education and Human Services, shall hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, any holder of, or applicant for, a casino license, or any holding or intermediary company with respect thereto, in connection with any cause, application, or matter. However, a special State officer or employee without responsibility for matters affecting casino activity may hold employment directly with any holder of or applicant for a casino license or any holding or intermediary company thereof and if so employed may hold, directly or indirectly, an interest in, or represent, appear for, or negotiate on behalf of, his employer, except as otherwise prohibited by law.

c. No person or any member of his immediate family, nor any partnership, firm or corporation with which such person is associated or in which he has an interest, nor any partner, officer, director or employee while he is associated with such partnership, firm or corporation, shall, within two years next subsequent to the termination of the office or employment of such person, hold, directly or indirectly, an interest in, or hold employment with, or represent, appear for or negotiate on behalf of, any holder of, or applicant for, a casino license in connection with any cause, application or matter, or any holding or intermediary company with respect to such holder of, or applicant for, a casino license in connection with any phase of casino development, permitting, licensure or any other matter whatsoever related to casino activity, except that a member of the immediate family of a person may hold employment with the holder of, or applicant for, a casino license if, in the judgment of the Executive Commission on Ethical Standards, the Joint Legislative Committee on Ethical

Standards, or the Supreme Court, as appropriate, such employment will not interfere with the responsibilities of the person and will not create a conflict of interest, or reasonable risk of the public perception of a conflict of interest, on the part of the person. Nothing herein contained shall alter or amend the post-employment restrictions applicable to members and employees of the Casino Control Commission and employees and agents of the Division of Gaming Enforcement pursuant to subsection b. (2) of section 59 and to section 60 of P.L.1977, c.110 (C.5:12-59 and C.5:12-60).

d. This section shall not apply to the spouse of a State officer or employee, which State officer or employee is without responsibility for matters affecting casino activity, who becomes the spouse subsequent to the State officer's or employee's appointment or employment as a State officer or employee and who is not individually or directly employed by a holder of, or applicant for, a casino license, or any holding or intermediary company.

e. The Joint Legislative Committee on Ethical Standards and the Executive Commission on Ethical Standards, as appropriate, shall forthwith determine and publish, and periodically update, a list of those positions in State government with responsibility for matters affecting casino activity.

f. No person shall solicit or accept, directly or indirectly, any complimentary service or discount from any casino applicant or licensee which he knows or has reason to know is other than a service or discount that is offered to members of the general public in like circumstance.

g. No person shall influence, or attempt to influence, by use of his official authority, the decision of the commission or the investigation of the division in any application for licensure or in any proceeding to enforce the provisions of this act or the regulations of the commission. Any such attempt shall be promptly reported to the Attorney General; provided, however, that nothing in this section shall be deemed to proscribe a request for information by any person concerning the status of any application for licensure or any proceeding to enforce the provisions of this act or the regulations of the commission.

h. Any person who willfully violates the provisions of this section is a disorderly person and shall be subject to a fine not to exceed \$500.00 or imprisonment not to exceed six months, or both.

39. Section 77 of P.L.1977, c.110 (C.5:12-77) is amended to read as follows:

C.5:12-77 Law enforcement powers, responsibilities.

77. The division is a law enforcement agency, and its employees and agents shall have such law enforcement powers as may be delegated to them by the Attorney General to effectuate the purposes of P.L.1977, c.110 (C.5:12-1 et seq.).

The division shall prosecute all criminal violations of this act except those it may refer to the Division of Criminal Justice. To effectuate this power, the division shall have access to the State Grand Jury.

C.5:12-71.1 Exclusion, ejection of certain persons.

40. A casino licensee may exclude or eject from its casino hotel any person who is known to it to have been convicted, on at least three occasions, of a crime, disorderly persons offense, or petty disorderly persons offense committed in or on the premises of any casino hotel.

C.5:12-1.1 References to include "Casino Simulcasting Act."

41. Any reference in the "Casino Control Act," P.L.1977, c.110 (C.5:12-1 et seq.) to "this act" or to "P.L.1977, c.110" shall be deemed to include, where appropriate, the "Casino Simulcasting Act," P.L.1992, c.19 (C.5:12-191 et seq.).

42. This act shall take effect immediately.

Approved December 21, 1993.

CHAPTER 293

AN ACT concerning the municipal courts, enacting a new chapter 12 to Title 2B of the New Jersey Statutes and revising and repealing portions of the statutory law.

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

1. An additional chapter, chapter 12, is added to Title 2B of the New Jersey Statutes as follows:

TITLE 2B

CHAPTER 12. MUNICIPAL COURTS

2B:12-1.	Establishment of municipal courts.
2B:12-2.	Name of court.

- 2B:12-3. Place of court.
- 2B:12-4. Judge of municipal court; term of office; appointment.
- 2B:12-5. Additional municipal judges.
- 2B:12-6. Designation of acting judges.
- 2B:12-7. Qualifications of judges; compensation.
- 2B:12-8. Chief judge.
- 2B:12-9. Presiding judge of the municipal courts.
- 2B:12-10. Municipal court administrator and personnel.
- 2B:12-11. Certification of municipal court administrators.
- 2B:12-12. Bond or insurance.
- 2B:12-13. Powers of administrator.
- 2B:12-14. Officers empowered to execute process.
- 2B:12-15. Courtrooms and equipment.
- 2B:12-16. Territorial jurisdiction.
- 2B:12-17. Jurisdiction of specified offenses.
- 2B:12-18. Jurisdiction of specified offenses where indictment and trial by jury are waived.
- 2B:12-19. Authority of municipal court judge prior to indictment; notice to county prosecutor.
- 2B:12-20. Municipal housing court; jurisdiction.
- 2B:12-21. Officials authorized to act for court.
- 2B:12-22. Periodic service of imprisonment.
- 2B:12-23. Default in payment of fine; community service.
- 2B:12-24. Costs charged to complainant in certain cases.
- 2B:12-25. Records and standards for municipal courts.
- 2B:12-26. Docketing judgment.
- 2B:12-27. Blank.
- 2B:12-28. Defense of indigents.
- 2B:12-29. Blank.
- 2B:12-30. Automated Traffic System Fund.
- 2B:12-31. Suspension of driving privileges.

Establishment of municipal courts.

2B:12-1. Establishment of municipal courts. a. Every municipality shall establish a municipal court. If a municipality fails to maintain a municipal court or does not enter into an agreement pursuant to subsection b. or c. of this section, the Assignment Judge of the vicinage shall order violations occurring within its boundaries heard in any other municipal court in the county until such time as the municipality establishes and maintains a municipal court. The municipality without a municipal court shall be responsible for all

administrative costs specified in the order of the Assignment Judge pending the establishment of its municipal court.

b. Two or more municipalities, by ordinance, may enter into an agreement establishing a single joint municipal court and providing for its administration. A copy of the agreement shall be filed with the Administrative Director of the Courts. As used in this act, "municipal court" includes a joint municipal court.

c. Two or more municipalities, by ordinance or resolution, may agree to provide jointly for courtrooms, chambers, equipment, supplies and employees for their municipal courts and agree to appoint the same persons as judges and administrators without establishing a joint municipal court. Where municipal courts share facilities in this manner, the identities of the individual courts shall continue to be expressed in the captions of orders and process.

d. An agreement pursuant to subsection b. or c. of this section may be terminated as provided in the agreement. If the agreement makes no provision for termination, it may be terminated by any party with reasonable notices and terms as determined by the Assignment Judge of the vicinage.

Source: N.J.S.2A:8-1, N.J.S.2A:8-3, C.2A:8-18.2 (P.L.1990, c.95, s.5).

Name of court.

2B:12-2. Name of court. The name of a municipal court of a single municipality shall be the "Municipal Court of (insert name of municipality)." The name of a joint municipal court shall be specified in the ordinances establishing the court.

Source: N.J.S.2A:8-1.

Place of court.

2B:12-3. Place of court. Courtrooms and sessions of a municipal court need not be in the municipality for which the court has jurisdiction. If the same person is serving as judge of more than one municipal court, sessions of the respective courts may be combined.

Source: C.2A:8-18.1 (P.L.1957, c.167).

Judge of municipal court; term of office; appointment.

2B:12-4. Judge of municipal court; term of office; appointment.

a. Each judge of a municipal court shall serve for a term of three years from the date of appointment and until a successor is appointed and qualified. Any appointment to fill a vacancy not caused by the expiration of term shall be made for the unexpired term only. However, if a municipality requires by ordinance that the judge of the municipal court devote full time to judicial duties

or limit the practice of law to non-litigated matters, the first appointment after the establishment of that requirement shall be for a full term of three years.

b. In municipalities governed by a mayor-council form of government, the municipal court judge shall be appointed by the mayor with the advice and consent of the council. Each judge of a joint municipal court shall be nominated and appointed by the Governor with the advice and consent of the Senate. In all other municipalities, the municipal judge shall be appointed by the governing body of the municipality.

Source: N.J.S.2A:8-5.

Additional municipal judges.

2B:12-5. Additional municipal judges. a. With the written consent of the Assignment Judge of the vicinage, a municipality may:

- (1) increase the number of judgeships of the municipal court, or
- (2) appoint one or more temporary municipal judges.

b. A temporary judge is an additional judge of the municipal court appointed to meet a special need of limited duration. The procedure for appointment of temporary municipal judges shall be the same as that for other municipal judges, but each term of a temporary judge shall not exceed one year.

Source: C.2A:8-5a and C.2A:8-5b (P.L.1985, c.46, ss. 1 and 2); C.2A:8-5.2 (P.L.1983, c.430).

Designation of acting judges.

2B:12-6. Designation of acting judges. Subject to the Rules of Court, the Assignment Judge of the vicinage may appoint an acting judge of each of the municipal courts in the vicinage to serve as judge temporarily when the judge of that court is unable to hold the municipal court. A person appointed as an acting judge shall be a judge of another municipal court or an attorney-at-law. A copy of the appointment of an acting judge for a municipal court shall be sent to the judge of that court.

Source: N.J.S.2A:8-10.

Qualifications of judges; compensation.

2B:12-7. Qualifications of judges; compensation. a. Every judge, temporary judge and acting judge of a municipal court shall be a resident of this State and an attorney-at-law admitted to practice in this State for at least five years provided, however, that this provision shall not apply to any attorney-at-law serving as a judge of a municipal court on the effective date of this act.

b. In lieu of any other fees, judges of municipal courts shall be paid annual salaries set by ordinance or resolution of the municipalities establishing the court.

Source: N.J.S.2A:8-7; N.J.S.2A:8-9.

Chief judge.

2B:12-8. Chief judge. Where there is more than one judge of a municipal court, the municipality may designate one of the judges as the chief judge of the court. The chief judge shall designate the time and place of court and assign cases among the judges.

Source: N.J.S.2A:8-19.

Presiding judge of the municipal courts.

2B:12-9. Presiding judge of the municipal courts. If the Chief Justice designates a judge of the Superior Court or a judge of one of the municipal courts in a vicinage to serve as presiding judge of the municipal courts for that vicinage, that judge may exercise powers delegated by the Chief Justice or established by the Rules of Court.

If the presiding judge is a municipal court judge, the presiding judge shall be paid by the State for the time devoted to duties as Presiding Judge.

Source: New.

Municipal court administrator and personnel.

2B:12-10. Municipal court administrator and personnel. a. A municipality shall provide for an administrator and other necessary employees for the municipal court and for their compensation. With approval of the Supreme Court, an employee of the municipality, in addition to other duties, may be designated to serve as administrator of the municipal court.

b. The judge of a municipal court may designate in writing an acting administrator or deputy administrator to serve temporarily for an absent administrator or deputy administrator until the absent administrator or deputy administrator returns or a new administrator or deputy administrator is appointed. The acting administrator or acting deputy administrator shall be paid at a rate established by the judge but not exceeding that established for the administrator or deputy administrator.

Source: N.J.S.2A:8-13; C.2A:8-13.1 (P.L.1953, c.168); C.2A:8-13.2 (P.L.1971, c.189); C.2A:8-13.3 (P.L.1975, c.39).

Certification of municipal court administrators.

2B:12-11. Certification of municipal court administrators. a. The Supreme Court may appoint a Municipal Court Administrator Certification Board. That board shall:

(1) Design examinations for certification of municipal court administrators;

(2) Establish courses satisfying training requirements in subjects closely related to the duties of a municipal court administrator; and

(3) Establish procedures and fees for certification.

b. A person shall be certified as a Municipal Court Administrator if the person:

(1) Is a high school graduate;

(2) Has a combination of two years of either full-time government employment performing duties related to those of a municipal court administrator, or higher education;

(3) Completes the training required by the board;

(4) Passes the examination held by the board, and

(5) Pays any required certification fee.

c. A person who is a municipal court administrator and has been serving in that position for five years on the effective date of this act shall be certified as a municipal court administrator if the person passes the examination held by the board and pays any required certification fee. A person who is a municipal court administrator and has been serving in that position for three years on the effective date of this act shall be certified as a municipal court administrator if the person completes the training required by the board, passes the examination held by the board and pays any required certification fee.

d. A municipal court administrator certificate may be revoked or suspended by the board for dishonest practices or failure to perform, or neglect of, duties of a municipal court administrator.

Source: New.

Bond or insurance.

2B:12-12. Bond or insurance. Before assuming the duties of office, a judge or administrator of a municipal court, or person employed by the court who handles money in the scope of that employment, shall be covered by a bond or insurance against loss or misappropriation of funds payable to the municipality, county and State, in an amount and with terms set by the municipality.

Source: N.J.S.2A:8-14.

Powers of administrator.

2B:12-13. Powers of administrator. Any process, order, warrant or judgment issued by a municipal court may be signed by the judge or be attested in the judge's name and signed by the municipal court administrator. The municipal court administrator shall have the authority granted by law and the Rules of Court to administrators and clerks of courts of record.

Source: N.J.S.2A:8-15.

Officers empowered to execute process.

2B:12-14. Officers empowered to execute process. Any law enforcement officer, or any other person authorized by law, may act in the service, execution and return of process, orders, warrants and judgments issued by any municipal court.

Source: N.J.S.2A:8-16.

Courtrooms and equipment.

2B:12-15. Courtrooms and equipment. Suitable courtrooms, chambers, offices, equipment and supplies for the municipal court, its administrator's office and its violations bureau shall be provided by the municipality.

Source: N.J.S.2A:8-18.

Territorial jurisdiction.

2B:12-16. Territorial jurisdiction. a. A municipal court of a single municipality shall have jurisdiction over cases arising within the territory of that municipality. A joint municipal court shall have jurisdiction over cases arising within the territory of any of the municipalities which the court serves. The territory of a municipality includes any premises or property located partly in and partly outside of the municipality.

b. A municipal court judge, serving as an acting judge in any other municipal court in the county, may also hear matters arising out of that other court, while sitting in the court where the acting judge holds a regular appointment.

Source: N.J.S.2A:8-20.

Jurisdiction of specified offenses.

2B:12-17. Jurisdiction of specified offenses. A municipal court has jurisdiction over the following cases within the territorial jurisdiction of the court:

- a. Violations of municipal ordinances;
- b. Violations of the motor vehicle and traffic laws;

- c. Disorderly persons offenses, petty disorderly persons offenses and other non-indictable offenses except where exclusive jurisdiction is given to the Superior Court;
 - d. Violations of the fish and game laws;
 - e. Proceedings to collect a penalty where jurisdiction is granted by statute; and
 - f. Any other proceedings where jurisdiction is granted by statute.
- Source: N.J.S.2A:8-21.

Jurisdiction of specified offenses where indictment and trial by jury are waived.

2B:12-18. Jurisdiction of specified offenses where indictment and trial by jury are waived. A municipal court has jurisdiction over the following crimes occurring within the territorial jurisdiction of the court, where the person charged waives indictment and trial by jury in writing and the county prosecutor consents in writing:

- a. Crimes of the fourth degree enumerated in chapters 17, 18, 20 and 21 of Title 2C of the New Jersey Statutes; or
- b. Crimes where the term of imprisonment that may be imposed does not exceed one year.

Source: N.J.S.2A:8-22.

Authority of municipal court judge prior to indictment; notice to county prosecutor.

2B:12-19. Authority of municipal court judge prior to indictment; notice to county prosecutor. a. A municipal court has authority to conduct proceedings in a criminal case within its territorial jurisdiction prior to indictment subject to the Rules of Court.

b. A municipal court shall not discharge a person charged with an indictable offense without first giving the county prosecutor notice and an opportunity to be heard in the case.

Source: N.J.S.2A:8-23.

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, and shall have concurrent jurisdiction to appoint receivers pursuant to section 6 of P.L.1966, c.168 (C.2A:42-79) and to enforce the provisions of P.L.1971, c.224 (C.2A:42-85 et seq.).

Source: C.2A:8-24.1 (P.L.1983, c.207, s.4).

Officials authorized to act for court.

2B:12-21. Officials authorized to act for court. a. An administrator or deputy administrator of a municipal court, authorized by a judge of that court, may exercise the power of the municipal court to administer oaths for complaints filed with the municipal court and to issue warrants and summonses.

b. A police officer in charge of a police station, other than an officer who participated in the arrest of the defendant, may exercise the power of the municipal court to administer oaths for complaints filed with the municipal court. Any police officer may issue summonses related to such complaints and may as authorized by the Rules of the Court issue a summons in lieu of an arrest for an offense committed in the officer's presence.

c. The authority of the municipal court to set conditions of pre-trial release may be exercised by an administrator or deputy administrator of a municipal court who is authorized by the judge of that court, or by any police officer in charge of a police station, other than an officer who participated in the arrest of the defendant. The authority may be exercised only in accordance with bail schedules promulgated by the Administrative Office of the Courts or by the municipal court.

d. Except as otherwise provided by the Rules of Court, a person charged with a non-indictable offense shall be released on summons or personal recognizance without unnecessary delay and within 12 hours after arrest unless a judge or court administrator has set the conditions for pretrial release and the conditions remain unmet.

e. A person acting for a municipal court by authority of this section shall immediately file the complaint, warrant, summons or recognizance which was the subject of the action with the municipal court.

Source: N.J.S.2A:8-27; N.J.S.2A:8-28.

Periodic service of imprisonment.

2B:12-22. Periodic service of imprisonment. A court may order that a sentence of imprisonment be served periodically on particular days, rather than consecutively. The person imprisoned shall be given credit for each day or fraction of a day to the nearest hour actually served.

Source: C.2A:8-30.1 (P.L.1969, c.146).

Default in payment of fine; community service.

2B:12-23. Default in payment of fine; community service. a. A person, sentenced by a municipal court to pay a fine, who defaults in

payment may be ordered to perform community service in lieu of incarceration or other modification of the sentence with the person's consent.

b. The municipal official in charge of the community service program shall report to the municipal court any failure of a person subject to a court work order to report for work or to perform the assigned work. Upon receipt of the report, the court may revoke its community service order and impose any sentence consistent with the original sentence.

Source: C.2A:8-31.1 and C.2A:8-31.2 (P.L.1983, c.153).

Costs charged to complainant in certain cases.

2B:12-24. Costs charged to complainant in certain cases. In cases where the judge of a municipal court dismisses the complaint or acquits the defendant and finds that the charge was false and not made in good faith, the judge may order that the complaining witness pay the costs of court established by law.

Source: N.J.S.2A:8-32.

Records and standards for municipal courts.

2B:12-25. Records and standards for municipal courts. The Supreme Court may prescribe records to be maintained and reports to be filed by the municipal court and may promulgate standards for facilities and staff of municipal courts.

Source: New.

Docketing judgment.

2B:12-26. Docketing judgment. A judgment of a municipal court assessing a penalty, fine or restitution may be docketed in the Superior Court by the party recovering the judgment.

A judgment docketed in the Superior Court shall operate, from the time of the docketing, as though the judgment was obtained in an action originally commenced in the Superior Court.

After a judgment has been docketed in the Superior Court, the municipal court shall not issue an execution or hold proceedings in the case except that the municipal court may grant a new trial or process an appeal.

If a new trial is granted or an appeal taken after a judgment is docketed, the Superior Court shall not issue an execution on the judgment pending the final determination of the proceedings.

Source: C.2A:8-42, C.2A:8-43, C.2A:8-48, C.2A:8-51, C.2A:8-52, C.2A:8-53 (P.L.1968, c.460, ss. 1,2,7,10,11,12).

Defense of indigents.

2B:12-28. Defense of indigents.

a. A municipality may employ attorneys-at-law on a full-time, part-time or per-case basis to provide for the representation of persons entitled by law to appointment of counsel.

b. A municipality may, by ordinance, require a person applying for representation by a municipal public defender to pay an application fee of not more than \$50.00. The municipal court may waive any required application fee, in whole or in part, if the court determines, in its discretion, that the application fee represents an unreasonable burden on the person seeking representation.

Source: New.

Automated Traffic System Fund.

2B:12-30. Automated Traffic System Fund.

a. The Legislature finds and declares that there is a need to improve the management, efficiency and effectiveness of municipal court operations and quality of justice by providing funds:

(1) To be utilized by the Administrative Office of the Courts to design, equip, operate and maintain a standardized, Statewide computer system, including integrated traffic ticket control, court financial accounting, case processing, statistical reporting services and other components necessary to automate municipal court operations; and

(2) To ensure the smooth exchange of automated information among the Judiciary, the Division of Motor Vehicles, law enforcement agencies, other public or quasi-public agencies, or those autonomous systems approved by the Administrative Office of the Courts pursuant to subsection d. of this section.

b. In order to accomplish these purposes, there is created the "Automated Traffic System Fund." The fund shall be a dedicated fund within the General Fund and administered by the Administrative Office of the Courts. The fund shall be the depository of moneys realized from the \$1.00 surcharge imposed pursuant to section 6 of P.L.1990, c.95 (C.2A:8-21.1), the \$2.00 court cost assessment imposed pursuant to subsection a. of N.J.S. 22A:3-4 and any other moneys made available for the purposes of the fund.

c. The Supreme Court may issue Rules of Court to effectuate the purposes of this act.

d. Nothing in this section shall be deemed to prevent a municipality, at its own expense, from maintaining or obtaining and using an autonomous computer system for integrated traffic ticket control, court financial accounting, case processing, statistical reporting services and other components necessary to automate

municipal court operations that interconnects with the Automated Traffic System, its components and computer network, upon the approval of the Administrative Office of the Courts, in accordance with the following:

(1) An autonomous system shall only be approved for interconnection with the Automated Traffic System (ATS) when it meets all technical interconnection requirements, standardized data definitions and functionality of the Automated Traffic System, including its criminal and ordinance violation components, necessary to: fully automate municipal court operations in accordance with law, court rule or administrative directive; maintain and update on-line the standardized Statewide data base and its electronic traffic and criminal warrant components; and provide for on-line inquiry and exchange of automated data, consistent with the purposes expressed in subsection a. of this section.

(2) A municipality that obtains and uses an autonomous system, approved for interconnection with the Automated Traffic System, shall retain, from the date of interconnection, one-half the full amount of that portion of the court cost assessment imposed and collected on and after that date for payment into the Automated Traffic System Fund, pursuant to subsection a. of N.J.S.22A:3-4. The retained court cost assessment shall be used by the municipality to offset the operating costs of its autonomous system, including costs to maintain compliance with the interconnection requirements of the Automated Traffic System. A municipality shall be entitled only to retain those court cost assessments for as long as its autonomous system continues to meet the update and other requirements of paragraph (1) of subsection d. of this section.

(3) That portion of the court cost assessment, imposed pursuant to subsection a. of N.J.S.22A:3-4 and retained by the State, shall be used for the purposes described in subsection a. of this section including: the State's costs, within the Automated Traffic System, of developing and maintaining interconnection with an autonomous system; the maintenance, improvement and updating of the Automated Traffic System, its components and the standardized Statewide data base; and the procurement and maintenance of hand-held data entry devices and related equipment for use by parking authorities or parking agencies who choose to be directly serviced by the Automated Traffic System. The Administrative Office of the Courts may obtain either directly, through the Statewide master contract process, or as otherwise provided by law, automation services or equipment including hand-held, ticket-issuing devices and printers

for use by those parking authorities or parking agencies to facilitate the exchange of automated information and maintain the efficiency of the standardized Statewide computer system.

(4) An autonomous computer system used by a municipality shall be interconnected with the Automated Traffic System and its components by January 1, 1997. The Administrative Office of the Courts shall, at no cost to the municipality, install and maintain the telecommunication line and the court's modem to permit the municipal court to provide for the on-line exchange of automated information with the Automated Traffic System and its components. The Administrative Office of the Courts shall maintain sufficient capacity on its mainframe computer to incorporate the standardized data of that municipal court into the Statewide record system, including the Statewide traffic and criminal warrant systems. Any municipality that fails to maintain and use an autonomous computer system that meets the requirements of this subsection by January 1, 1997 shall be implemented on ATS directly. After that date, municipal courts operating on ATS retain full discretion to either continue on ATS or subsequently obtain and use an autonomous system approved for interconnection.

(5) Nothing in this section shall preclude the Administrative Office of the Courts from immediately terminating, on an emergency basis, without notice, any interconnection with an autonomous system whose continued operation at any time immediately threatens or has compromised the security or data integrity of the Automated Traffic System, any of its components or any of the public and quasi-public agencies that exchange automated information with the Automated Traffic System, pursuant to paragraph (2) of subsection a. of this section. The municipality shall immediately be provided with written reasons for the termination, which shall continue until the threats to security and data integrity have been removed.

(6) If there is any disagreement between the municipality and the Administrative Office of the Courts concerning the standards for the exchange of automated information set forth in this section, the municipality or the Administrative Office of the Courts may seek the advice of the New Jersey Information Resources Management Commission established pursuant to P.L.1993, c. 199 (C.52:9XX-1 et seq.).

(7) Any municipal contract related to the operation of an autonomous computer system shall be subject to review, audit and the policies of the Division of Local Government Services in accordance with N.J.S.40A:11-1 et seq. including the auditing

standards of the Division of Local Government Services relating to the processing of transactions by servicing organizations pursuant to section 6 of P.L.1972, c.112 (C.40A:11-12.6). All contracts between municipalities and private service providers shall require compliance with the provisions of this section.

(8) The Administrative Office of the Courts shall promulgate administrative procedures necessary to accomplish the purposes of this subsection.

e. By April 1, 1996, a special committee shall be established to review the adequacy of funding for the Automated Traffic System and the Automated Complaint System and the extent to which autonomous computer system interconnections have been requested and successfully completed. The committee may recommend to what extent, if any, the funding level should be adjusted and the need for any further legislative action. The special committee shall be comprised of seven members as follows: one Senator appointed by the President of the Senate; one member of the General Assembly appointed by the Speaker of the General Assembly; the Director of the Administrative Office of the Courts or his designee; the president of the New Jersey League of Municipalities or his designee; the president of the New Jersey Municipal Court Administrators Association or his designee; the president of the New Jersey Municipal Managers Association or his designee and the president of the New Jersey Association of Parking Authorities and Agencies or his designee. The committee shall report its findings to the Legislature by September 30, 1996.

Source: C.2A:8-21.2 and C.2A:8-21.3 (P.L.1990, c.96, ss. 1 and 2).

Suspension of driving privileges.

2B:12-31. Suspension of driving privileges. a. (1) If a defendant charged with a disorderly persons offense, a petty disorderly persons offense, a violation of a municipal ordinance, or a violation of any other law of this State for which a penalty may be imposed fails to appear at any scheduled court proceeding after written notice has been given to said defendant pursuant to the Rules of Court, a municipal court may order the suspension of the person's driving privileges or nonresident reciprocity privilege or prohibit the person from receiving or obtaining driving privileges until the pending matter is adjudicated or otherwise disposed of, except by dismissal for failure of defendant to appear.

(2) If a defendant sentenced to pay a fine or costs, make restitution, perform community service, serve a term of probation, or do any other act as a condition of that sentence fails to do so, a

municipal court may order the suspension of the person's driving privileges or nonresident reciprocity privilege or prohibit the person from receiving or obtaining driving privileges until the terms and conditions of the sentence have been performed or modified.

b. Prior to any action being taken pursuant to the provisions of this section, the defendant shall be given notice of the proposed action and afforded an opportunity to appear before the court to contest the validity of the proposed action.

c. The municipal court shall notify the Division of Motor Vehicles of any action taken pursuant to the provisions of this section.

d. Any action taken by a municipal court pursuant to this section shall be in addition to any other remedies which are available to the court and in addition to any other penalties which may be imposed by the court.

e. (1) When a defendant whose license has been suspended pursuant to subsection a. of this section satisfies the requirements of that subsection, the municipal court shall forward to the Division of Motor Vehicles a notice to restore the defendant's driving privileges.

(2) There shall be included in the fines and penalties imposed by a court on a defendant whose license has been suspended pursuant to subsection a. of this section, the following:

(a) A fee of \$3.00 which shall be transferred to the Division of Motor Vehicles;

(b) A penalty of \$10.00 for the issuance of the failure to appear notice; and

(c) A penalty of \$15.00 for the order of suspension of defendant's driving privileges.

Source: C.2A:8-27.1 (P.L.1991, c.240).

2. Section 8 of P.L.1990, c.95 is amended to read as follows:

8. This act shall take effect 90 days after the date of enactment, but shall remain inoperative until enactment into law of P.L.1990, c.96 (C.2A:8-21.2 et seq.).

3. Section 3 of P.L.1990, c.96 is amended to read as follows:

3. This act shall take effect immediately, but shall remain inoperative until the operative date of P.L. 1990, c.95 (C.2A:8-18.2 et al.) and shall not apply to offenses committed prior to the operative date.

4. N.J.S.22A:3-4 is amended to read as follows:

Fees for criminal proceedings.**22A:3-4. Fees for criminal proceedings.**

The fees provided in the following schedule, and no other charges whatsoever, shall be allowed for court costs in any proceedings of a criminal nature in the municipal courts but no charge shall be made for the services of any salaried police officer of the State, county or municipal police.

For violations of Title 39 of the Revised Statutes, or of traffic ordinances, at the discretion of the court, up to but not exceeding \$30.00.

For all other cases, at the discretion of the court, up to but not exceeding \$30.00.

In municipal court proceedings, the court shall impose court costs within the maximum limits authorized by this section, as follows:

a. For every violation of any statute or ordinance the sum of \$2.00. The court shall not suspend the collection of this \$2.00 court cost assessment. These court cost assessments shall be collected by the municipal court administrator for deposit into the Automated Traffic System Fund, created pursuant to N.J.S.2B:12-30.

b. For each fine, penalty and forfeiture imposed and collected under authority of 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 the sum of \$.50. The court shall not suspend the collection of this \$.50 court cost assessment. These court cost assessments shall be collected by the municipal court administrator for deposit into the "Emergency Medical Technician Training Fund" established pursuant to P.L.1992, c.143 (C.26:2K-54 et al.).

The provisions of this act shall not prohibit the taxing of additional costs when authorized by R.S.39:5-39.

For certificate of judgment \$4.00

For certified copy of paper filed with the court as a public record:

First page \$4.00

Each additional page or part thereof..... \$1.00

For copy of paper filed with the court as a public record:

First page \$2.00

Each additional page or part thereof..... \$1.00

In addition to any fine imposed, when a supplemental notice is sent for failure to appear on a return date the cost shall be \$10.00 per notice, unless satisfactory evidence is presented to the court that the notice was not received.

CONSTABLES OR OTHER OFFICERS

From the fees allowed for court costs in the foregoing schedule, the clerk of the court shall pay the following fees to constables or other officers:

Serving warrant or summons, \$1.50.

Serving every subpoena, \$0.70.

Serving every execution, \$1.50.

Advertising property under execution, \$0.70.

Sale of property under execution, \$1.00.

Serving every commitment, \$1.50.

Transport of defendant, actual cost.

Mileage, for every mile of travel in serving any warrant, summons, commitment, subpoena or other process, computed by counting the number of miles in and out, by the most direct route from the place where such process is returnable, exclusive of the first mile, \$0.20.

If defendant is found guilty of the charge laid against him, he shall pay the costs herein provided, but if, on appeal, the judgment is reversed, the costs shall be repaid to defendant. If defendant is found not guilty of the charge laid against him, the costs shall be paid by the prosecutor, except when the Director of the Division of Motor Vehicles, a peace officer, or a police officer shall have been prosecutor.

5. 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 the municipality wherein the violation occurred, to be used by the 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 complainant is the director, a member of his staff, a member of the State Police, 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.

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.

Repealer.

6. The following are repealed:

New Jersey Statutes sections:

N.J.S.2A:8-1 to N.J.S.2A:8-5 both inclusive;

N.J.S.2A:8-7 to N.J.S.2A:8-10 both inclusive;

N.J.S.2A:8-12 to N.J.S.2A:8-32 both inclusive;

N.J.S.2A:8-34 to N.J.S.2A:8-41 both inclusive.

Pamphlet Laws:

Laws of 1985, c.46, ss. 1-3 (C.2A:8-5a to C.2A:8-5c both inclusive);

Laws of 1967, c.209 (C.2A:8-5.1);

Laws of 1983, c.430 (C.2A:8-5.2);

Laws of 1991, c.98 (C.2A:8-13a);

Laws of 1971, c.189 (C.2A:8-13.2);

Laws of 1957, c.167 (C.2A:8-18.1);

Laws of 1990, c.95, ss.5 and 6 and 7 (C.2A:8-18.2 and C.2A:8-21.1);

Laws of 1990, c.96, ss.1 and 2 (C.2A:8-21.2 and C.2A:8-21.3);

Laws of 1983, c.207, s.4 (C.2A:8-24.1);

Laws of 1991, c.240 (C.2A:8-27.1);

Laws of 1969, c.146 (C.2A:8-30.1);

Laws of 1983, c.153, ss.1 and 2 (C.2A:8-31.1 and C.2A:8-31.2);

Laws of 1968, c.460, ss.1-14 (C.2A:8-42 through C.2A:8-55 both inclusive).

7. This act shall take effect on February 15, 1994, except for sections 2 and 3 which shall take effect immediately and which sections shall be retroactive to December 23, 1993 if enacted after that date.

Approved December 22, 1993.

CHAPTER 294

AN ACT to validate certain proceedings for the financing of school district projects and any bonds or other obligations issued or to be issued pursuant to the proceedings.

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

1. All proceedings heretofore had or taken by any school district or at any school election for the purpose of obtaining voter approval for the financing of projects under the "Public School Capital Finance Assistance Act," P.L.1993, c.102 (C.34:1B-7.20 et al.) and any bonds or other obligations of the school district issued or to be issued in pursuance of any proposal adopted by the legal voters at such meeting or election, are hereby ratified, validated and confirmed, notwithstanding that a proposal to issue bonds was not contained in a separate resolution on the ballot as required by the provisions of N.J.S.18A:24-12; provided that the amount of the bonds to be issued was contained in the capital outlay budget; and provided further that no action, suit, or other proceeding of any nature to contest the validity of the proceedings has heretofore been instituted prior to the date upon which this act shall take effect and within the time fixed therefor by or pursuant to law or rule of court, or when the time has not heretofore expired, if instituted within 15 days after the effective date of this act.

2. This act shall take effect immediately.

Approved December 22, 1993.

CHAPTER 295

AN ACT to repeal the "Financial Business Tax Law (1946)," approved April 26, 1946 (P.L.1946, c.174; C.54:10B-1 et seq.).

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

Repealer.

1. P.L.1946, c.174 (C.54:10B-1 through 54:10B-25, inclusive) is repealed; provided, however, that this repeal shall not affect any obligation, lien or duty to pay taxes, interest or penalties which have accrued or may accrue by virtue of any taxes imposed pursuant to the provisions of the law repealed by this act, or which may be imposed with respect to any redetermination, correction, recomputation or deficiency assessment; and provided that all taxes and returns which would have been due and payable under the provisions of the law repealed shall be due and payable on April 15, 1994, as if the law was in effect; and provided that this repeal shall not affect the legal authority of the State to audit records and assess and collect taxes due or which may be due, together with such interest and penalties as have accrued or would have accrued thereon under the provisions of the law repealed; and provided that this repeal shall not affect any determination of, or affect any proceeding for, the enforcement thereof.

2. This act shall take effect on January 1, 1994.

Approved December 22, 1993.

CHAPTER 296

AN ACT concerning driver's license suspension or revocations upon drug-related convictions, supplementing chapter 4 of Title 39 of the Revised Statutes and amending R.S.39:4-50.

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

C.39:5-30.12 Definitions.

1. As used in sections 1 through 5 of this act:
"Conviction" means a final adjudication that a violation has occurred, a final judgment on a verdict, a finding of guilt in a tribu-

nal of original jurisdiction, or a conviction following a plea of guilty, non vult or nolo contendere accepted by a court. It also includes an unvacated forfeiture of bail, bond or collateral deposited to secure the person's appearance in court, or the payment of a fine or court costs, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended or probated.

"Drug offense" means a conviction or an adjudication under juvenile proceedings for the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance, the possession of which is prohibited under the federal Controlled Substances Act or a conviction or adjudication of delinquency for any violation of a law substantially similar in nature to the "Comprehensive Drug Reform Act of 1987," N.J.S.2C:35-1 et al.

"Person" means a natural person who is a resident of New Jersey at the time of the violation resulting in the conviction or adjudication of delinquency or who holds a New Jersey driver's license or permit at the time of the violation resulting in the conviction or adjudication of delinquency.

C.39:5-30.13 Suspension, revocation, postponement of driving privilege for persons convicted of certain offenses.

2. The Director of the Division of Motor Vehicles shall suspend, revoke, or postpone the driving privilege in this State for a period of not less than six months or more than two years of every person convicted of or adjudicated delinquent for a drug offense in any federal court or in the court of any other state, or the District of Columbia. When a person whose license is subject to suspension, revocation, or postponement under this act is less than 17 years of age, the period of suspension, revocation or postponement imposed by the director shall commence immediately and shall run for a period of not less than six months or more than two years after the date the person reaches the age of 17. If the driving privilege of any person is under revocation, suspension, or postponement for a violation of Title 2C or Title 39 of the Revised Statutes at the time of the imposition of suspension, revocation, or postponement under this act, the revocation, suspension, or postponement imposed herein shall commence as of the date of termination of the existing suspension, revocation, or postponement.

C.39:5-30.14 Notice of suspension, revocation, postponement; hearing request.

3. The proposed notice of suspension, revocation, or postponement shall be mailed to the person at his last address of record

with the Division of Motor Vehicles. The suspension, revocation, or postponement shall become effective 20 days from the date of mailing of the notice, unless the director establishes another date for the commencement, or the person notifies the director in writing within 15 days of the mailing of the notice of his intention to challenge the suspension, revocation, or postponement. A hearing request shall contain a detailed statement of the factual and legal basis upon which the person challenges the suspension.

C.39:5-30.15 Responsibility of director.

4. The Director of the Division of Motor Vehicles shall be responsible for the receipt of all reports of drug offense convictions submitted to this State by federal courts, courts of any other state, or courts of the District of Columbia.

C.39:5-30.16 Rules, regulations.

5. The Director of the Division of Motor Vehicles may promulgate rules and regulations pursuant to the Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.) to implement sections 1 through 5 of this act.

6. R.S.39:4-50 is amended to read as follows:

Driving while intoxicated.

39:4-50. (a) 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 0.10% 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 0.10% or more by weight of alcohol in the defendant's blood, shall be subject:

(1) For the first offense, to a fine of not less than \$250.00 nor more than \$400.00 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 six months nor more than one year.

(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 Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director, consistent with subsection (b) of this section.

(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.

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 Director of the Division of Alcoholism in the Department of Health; 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's Intoxicated Driving Programs Unit, and of the Intoxicated Driver Resource Centers and a program of alcohol education and highway safety, as prescribed by the Director of the Division of Motor Vehicles. 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 Rule 7:8-2 of the N.J. Court Rules, 1969, or R.S.39:5-22. Upon sentencing, the court shall forward to the Bureau of Alcohol Countermeasures within the Intoxicated Driving Programs Unit a copy of a person's conviction record. A fee of \$80.00 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 Programs 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 Director of the Division of Motor Vehicles. 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 director, 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 Director of the Division of Motor Vehicles 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 Criminal Practice, as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The counties, in cooperation with the Division of Alcoholism and the Division of Motor Vehicles, but subject to the approval of the Division of Alcoholism, 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 certified alcoholism counselor or other professional with a minimum of five years' experience in 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 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.

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 Bureau of Alcohol Countermeasures. Upon attendance at an Intoxicated Driver Resource Center, a person shall be assessed a per diem fee of \$50.00 for the first offender program or a per diem fee of \$75.00 for the second offender program, as appropriate.

The centers shall conduct a program of alcohol education and highway safety, as prescribed by the Director of the Division of Motor Vehicles.

The Director of the Division of Alcoholism 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.

7. This act shall take effect immediately and shall be applicable for convictions entered on or after that date.

Approved December 22, 1993.

CHAPTER 297

AN ACT concerning a voluntary furlough program for State employees and supplementing Title 11A of the New Jersey Statutes.

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

C.11A:6-1.1 Establishment of voluntary furlough program.

1. The Commissioner of the Department of Personnel shall establish a voluntary furlough program for State employees under which days of leave without pay, singly or consecutively, may be taken. The seniority rights and health benefits coverage of an employee who participates in this furlough program shall continue and shall not be adversely affected by participation.

2. The Commissioner of the Department of Personnel shall promulgate, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as are necessary to effectuate the purposes of this act.

3. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 298

AN ACT concerning wetlands creation, enhancement, or restoration, amending P.L.1987, c.156, and supplementing Title 13 of the Revised Statutes.

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

C.13:9C-1 Definitions.

1. As used in this act:

"Council" means the Wetlands Mitigation Council established pursuant to section 14 of P.L.1987, c.156 (C.13:9B-14).

"Department" means the Department of Environmental Protection.

"Wetlands" means freshwater wetlands as defined pursuant to P.L.1987, c.156 (C.13:9B-1 et al.), or coastal wetlands as defined pursuant to P.L.1970, c.272 (C.13:9A-1 et seq.).

"Wetlands creation, enhancement, or restoration" means those activities or techniques designed to create wetlands or enhance or restore degraded wetlands.

"Wetlands permit" means a permit approved and issued by the department for activities regulated pursuant to P.L.1987, c.156 (C.13:9B-1 et al.) or P.L.1970, c.272 (C.13:9A-1 et seq.).

C.13:9C-2 Responsibilities of the department, council.

2. a. The Department of Environmental Protection, in addition to its responsibilities under P.L.1987, c.156 (C.13:9B-1 et al.) and P.L.1970, c.272 (C.13:9A-1 et seq.), and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt, within six months of the effective date of this act, rules and regulations to assist counties in identifying areas suitable for wetlands creation, enhancement, or restoration, and which shall be

used by the Wetlands Mitigation Council to approve or disapprove areas so identified by the governing body of a county.

b. If the governing body of a county submits to the council a map of areas proposed for use in wetlands creation, enhancement, or restoration, and any supporting documents or information that the council may require, the council shall review and approve or disapprove the submittal within 120 days of receipt thereof. The council may conduct site visits and evaluations as may be necessary within that time to confirm the suitability for wetlands creation, enhancement, or restoration of the areas being proposed. The council may approve some of the areas identified by the county while disapproving other areas, stating the reasons for the disapproval of areas in writing.

c. Whenever the department issues a wetlands permit within a county with an approved list of areas suitable for wetlands creation, enhancement, or restoration and the department is requiring wetlands creation, enhancement, or restoration as a condition of the permit, the department may utilize the list of sites approved by the council for that county in identifying the areas wherein the wetlands creation, enhancement, or restoration activities are to take place.

C.13:9C-3 Identification, inventory of areas suitable for use in county.

3. a. The governing body of a county may, in consultation with the municipalities within its territorial jurisdiction, identify and inventory areas within the county that it deems suitable for use in wetlands creation, enhancement, or restoration in the event a wetlands permit is issued by the Department of Environmental Protection and the department requires the creation, enhancement, or restoration of wetlands as a condition of the permit.

b. Upon identification, the governing body shall forward to the council a map of the areas and any supporting documents or information that the council may require in order to review and approve or disapprove the use of those areas for wetlands creation, enhancement, or restoration purposes.

C.13:9C-4 Nonapplicability of act.

4. a. Nothing in this act shall be construed to discourage or prevent the creation, enhancement, or restoration of wetlands on the site of the approved regulated activity or to discourage or prevent the use of any area suitable for the creation, enhancement, or restoration of wetlands because the area was not previously approved by the council pursuant to section 2 of this act.

b. No State, regional, county, or local governmental entity, agency, or authority may deny or disapprove a permit, approval, or other authorization, which is required pursuant to law, rule, regulation, or local resolution or ordinance in order to develop a parcel or engage in any other activities thereon, because the parcel is located within an area approved by the council pursuant to section 2 of this act as being suitable for wetlands creation, enhancement, or restoration.

5. Section 13 of P.L.1987, c.156 (C.13:9B-13) is amended to read as follows:

C.13:9B-13 Mitigation of adverse environmental impacts.

13. a. The department shall require as a condition of a freshwater wetlands permit that all appropriate measures have been carried out to mitigate adverse environmental impacts, restore vegetation, habitats, and land and water features, prevent sedimentation and erosion, minimize the area of freshwater wetland disturbance and insure compliance with the Federal Act and implementing regulations.

b. The department may require the creation, enhancement, or restoration of an area of freshwater wetlands of equal ecological value to those which will be lost, and shall determine whether the creation, enhancement, or restoration of freshwater wetlands is conducted onsite or offsite. The department shall accept and evaluate a proposal to create, enhance, or restore an area of freshwater wetlands only after the department has evaluated the permit application for which the proposal is made, and shall evaluate the proposal to create, enhance, or restore an area of freshwater wetlands independently of the permit application. The department's evaluation of a proposal to create, enhance, or restore an area of freshwater wetlands shall be conducted in consultation with the United States Environmental Protection Agency.

c. If the department determines that the creation, enhancement, or restoration of freshwater wetlands onsite is not feasible, the department, in consultation with the United States Environmental Protection Agency, may consider the option of permitting: the creation of freshwater wetlands or the enhancement or restoration of degraded freshwater wetlands offsite on private property with the restriction on these freshwater wetlands of any future development; the protection of transition areas or upland areas offsite, on private property, that are deemed by the department to be valuable for the protection of a freshwater wetlands ecosystem, with the restriction on these areas of any future

development; or the making of a contribution to the Wetlands Mitigation Bank. The contribution shall be equivalent to the lesser of the following costs: (1) purchasing, and enhancing or restoring, existing degraded freshwater wetlands, resulting in preservation of freshwater wetlands of equal ecological value to those which are being lost; or (2) purchase of property and the cost of creation of freshwater wetlands of equal ecological value to those which are being lost. The applicant may also donate land as part of the contribution if the Wetlands Mitigation Council determines that the donated land has potential to be a valuable component of the freshwater wetlands ecosystem. The department shall permit the donation of land as a part of the contribution to the Wetlands Mitigation Bank only after determining that all alternatives to the donation are not practicable or feasible.

6. Section 15 of P.L.1987, c.156 (C.13:9B-15) is amended to read as follows:

C.13:9B-15 Powers of Wetlands Mitigation Council.

15. a. The Wetlands Mitigation Council shall be responsible for disbursements of funds from the bank to finance mitigation projects. The council shall have the power to purchase land to provide areas for the enhancement or restoration of degraded freshwater wetlands, to engage in the enhancement or restoration of degraded freshwater wetlands on any public lands, including public lands other than those acquired by the bank, and to preserve freshwater wetlands and transition areas determined to be of critical importance in protecting freshwater wetlands. The council shall assist the department in preparing the portions of the report required pursuant to section 29 of this act which pertain to mitigation.

b. The council may contract with nonprofit organizations, the Division of Fish, Game and Wildlife in the department, the United States Fish and Wildlife Service, and other appropriate agencies to carry out its responsibilities, and may aggregate mitigation actions to achieve economies of scale. Any contract proposed by the council pursuant to this subsection shall be subject to review and approval by the United States Environmental Protection Agency.

c. The council, in consultation with the United States Environmental Protection Agency, may transfer any funds or lands restricted by deed, easement or other appropriate means to mitigation and freshwater wetlands conservation purposes, to a state

or federal conservation agency that consents to the transfer, to expand or provide for:

- (1) Freshwater wetlands preserves;
- (2) Transition areas around existing freshwater wetlands to preserve freshwater wetland quality;
- (3) Future mitigation sites for freshwater wetlands enhancement, restoration, or other mitigation efforts; or
- (4) Research to enhance the practice of mitigation.

7. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 299

AN ACT concerning the operation of certain vessels on the waters of this State, supplementing chapter 7 of Title 12 of the Revised Statutes, and providing a penalty.

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

C.12:7-62 "Personal watercraft" defined.

1. For the purposes of this act, "personal watercraft" shall mean a power vessel defined as a Class "A" vessel by the United States Coast Guard, and which:

- a. Is designed to be operated from a sitting, standing or kneeling position;
- b. Is equipped with an internal combustion engine which powers a water jet pump; and
- c. Cannot be operated in a manner so as to disengage the pump so as to prevent the vessel from making headway.

C.12:7-63 Restrictions on operation of personal watercraft.

2. A person shall not operate a personal watercraft:

- a. On the waters of this State between sunset and sunrise, or during any time of restricted visibility as determined by an agent or officer of the Marine Law Enforcement Bureau, Division of State Police;
- b. Within the confines of the Point Pleasant Canal in the County of Ocean, or the Cape May Canal in the County of Cape May;
- c. Above idle speed within 50 feet of:

(1) A bathing beach that has its boundaries marked by buoys or signs;

(2) The shoreline; or

(3) Any person in the water; or

d. In such a manner as to make the vessel completely leave the water or otherwise become airborne, while crossing within 100 feet of the wake of another vessel.

C.12:7-64 Requirements for operator of personal watercraft.

3. A person operating a personal watercraft shall at all times:

a. Wear the safety switch lanyard while the personal watercraft is underway, provided that the personal watercraft is equipped with such a lanyard cut-off device; and

b. Proceed at a safe speed that shall allow the person operating the personal watercraft to take proper and effective action to avoid collision and to stop the personal watercraft within a safe distance, as may be appropriate under prevailing circumstances and conditions.

C.12:7-65 Floatation device required.

4. A person operating a personal watercraft or any passenger on a personal watercraft shall at all times when the personal watercraft is underway, wear a United States Coast Guard Approved Type I, II, III, or Type V Hybrid Personal Flotation Device.

C.12:7-66 Rules, regulations.

5. The Boat Regulation Commission, subject to the approval of the Attorney General and consistent with section 14 of P.L.1962, c.73 (C.12:7-34.49) shall, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary to effectuate the purposes of this act.

C.12:7-67 Adoption, enforcement of ordinances, resolutions.

6. a. The governing body of a county or municipality shall not adopt or enforce any ordinance or resolution, as appropriate, relating to the operation of personal watercraft on the waters of this State which is inconsistent with the provisions of this act, except as provided in subsection (a) of section 18 of P.L.1962, c.73 (C.12:7-34.53).

b. Any ordinance or resolution adopted by the governing body of a county or municipality in violation of subsection a. of this section shall be null and void.

c. Nothing in this section shall be deemed to preclude the governing body of a county or municipality from adopting or

enforcing an ordinance or resolution to provide access to the waters of this State located within the territorial limits of the county or municipality to the operators of personal watercraft; provided that the ordinance or resolution provides for appropriate access to those waters for all types of power vessels operating within the territorial limits of the county or municipality, as the case may be.

C.12:7-68 Operator permitted to tow water skier.

7. The operator of a personal watercraft designed to accommodate three or more persons shall be permitted to tow a water skier, provided that the personal watercraft has the capacity to allow one of the persons to face the stern of the personal watercraft for the purpose of tending to a ski rider; and that the person tending to the ski rider shall be present during the towing of the ski rider.

C.12:7-69 Violations; fines, penalties.

8. A person who violates any provision of this act shall be subject to the fines and penalties enumerated pursuant to section 16 of P.L.1962, c.73 (C.12:7-34.51).

9. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 300

AN ACT concerning the payment of health insurance premiums for certain retired county law enforcement officers, amending N.J.S.40A:10-23 and supplementing Title 40A of the New Jersey Statutes.

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

1. N.J.S.40A:10-23 is amended to read as follows:

Payment of premiums after retirement.

40A:10-23. Payment of premiums after retirement. Retired employees shall be required to pay for the entire cost of coverage for themselves and their dependents at rates which are deemed to be adequate to cover the benefits, as affected by Medicare, of the retired employees and their dependents on the basis of the utilization of services which may be reasonably expected of the older age

classification; provided, however, that the total rate payable by a retired employee for himself and his dependents, for coverage under the contract and for Part B of Medicare, shall not exceed by more than 25% the total amount that would have been required to have been paid by the employee and his employer for the coverage maintained had he continued in office or active employment and he and his dependents were not eligible for Medicare benefits.

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees who have retired on a disability pension or after 25 years' or more service with the employer, or have retired and reached the age of 62 or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe. The period of time a county law enforcement officer has been employed by any county or municipal police department, sheriff's department or county prosecutor's office, may be counted cumulatively as "service with the employer" for the purpose of qualifying for payment of health insurance premiums by the county pursuant to this section.

C.40A:10-23.1 Payments by county of second class for benefits for certain retirees.

2. Notwithstanding the provisions of N.J.S.40A:10-23 or any other law to the contrary, a county of the second class which has entered into contracts of group hospitalization, medical, surgical, major medical or health insurance or contracted with a nonprofit hospital service or medical service corporation pursuant to N.J.S.40A:10-17 shall pay the entire cost of such coverage during retirement for any policeman, as defined in section 1 of P.L.1944, c.255 (C.43:16A-1), who is enrolled in the Police and Firemen's Retirement System of New Jersey and who retires from service with the county after September 30, 1991 and on or before September 30, 1993 and for the employee's dependents, as well as the cost of the employee's coverage under Part B of Medicare, if the employee has a minimum of 25 years of public employment at least 15 years of which were with the county.

Any person who qualifies for the benefit provided pursuant to this section but who retired prior to the effective date of this act shall be reimbursed by the county for the cost of coverage incurred since the date of retirement.

3. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 301

AN ACT concerning the expungement of criminal records in certain cases and amending N.J.S.2C:52-2.

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

1. N.J.S.2C:52-2 is amended to read as follows:

Indictable offenses.

2C:52-2. Indictable Offenses. a. In all cases, except as herein provided, wherein a person has been convicted of a crime under the laws of this State and who has not been convicted of any prior or subsequent crime, whether within this State or any other jurisdiction, and has not been adjudged a disorderly person or petty disorderly person on more than two occasions may, after the expiration of a period of 10 years from the date of his conviction, payment of fine, satisfactory completion of probation or parole, or release from incarceration, whichever is later, present a duly verified petition as provided in section 2C:52-7 to the Superior Court in the county in which the conviction was entered praying that such conviction and all records and information pertaining thereto be expunged.

Although subsequent convictions for no more than two disorderly or petty disorderly offenses shall not be an absolute bar to relief, the nature of those conviction or convictions and the circumstances surrounding them shall be considered by the court and may be a basis for denial of relief if they or either of them constitute a continuation of the type of unlawful activity embodied in the criminal conviction for which expungement is sought.

b. Records of conviction pursuant to statutes repealed by this Code for the crimes of murder, manslaughter, treason, anarchy, kidnapping, rape, forcible sodomy, arson, perjury, false swearing, robbery, embracery, or a conspiracy or any attempt to commit any of the foregoing, or aiding, assisting or concealing persons accused of the foregoing crimes, shall not be expunged.

Records of conviction for the following crimes specified in the New Jersey Code of Criminal Justice shall not be subject to expungement: Section 2C:11-1 et seq. (Criminal Homicide), except death by auto as specified in section 2C:11-5; section 2C:13-1 (Kidnapping); section 2C:14-2 (Aggravated Sexual Assault); section 2C:15-1 (Robbery); section 2C:17-1 (Arson and Related

Offenses); section 2C:28-1 (Perjury); section 2C:28-2 (False Swearing) and conspiracies or attempts to commit such crimes.

Records of conviction for any crime committed by 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 and any conspiracy or attempt to commit such a crime shall not be subject to expungement if the crime involved or touched such office, position or employment.

c. In the case of conviction for the sale or distribution of a controlled dangerous substance or possession thereof with intent to sell, expungement shall be denied except where the crimes relate to:

(1) Marijuana, where the total quantity sold, distributed or possessed with intent to sell was 25 grams or less, or

(2) Hashish, where the total quantity sold, distributed or possessed with intent to sell was five grams or less.

d. In the case of a State licensed physician or podiatrist convicted of an offense involving drugs or alcohol or pursuant to section 14 or 15 of P.L.1989, c.300 (C.2C:21-20 or 2C:21-4.1), the court shall notify the State Board of Medical Examiners upon receipt of a petition for expungement of the conviction and records and information pertaining thereto.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 302

AN ACT to establish the New Jersey Council of County Vocational Schools and supplementing chapter 54 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:54-38 Establishment of New Jersey Council of County Vocational Schools.

1. There is established a body corporate and politic, with corporate succession, to be known as the New Jersey Council of County Vocational Schools. A county vocational school established pursuant to chapter 54 of Title 18A of the New Jersey

Statutes may, upon the approval of its board of education, be a member of the council.

C.18A:54-39 Membership of the council.

2. The council shall consist of the president of the board of education and the superintendent of each county vocational school which is a member of the council. A board of education president may designate another member of the board as an alternate to attend and to vote at council meetings in the president's absence. A member of the council shall serve without compensation but may be reimbursed for all reasonable and necessary expenses.

C.18A:54-40 Responsibilities of council.

3. The council shall select such officers and make such rules and regulations as may be necessary for the transaction of business. The council may, if it deems necessary, impose and collect dues from council members to defray expenses. The council may also employ such staff as it determines is necessary within the limit of funds available for this purpose.

C.18A:54-41 Powers, duties of council.

4. The council shall have perpetual succession and shall have the following powers and duties:

- a. To make, amend and repeal rules, regulations and bylaws for its own government and guidance, not inconsistent with the purposes of the council;
- b. To adopt an official seal and alter the same at pleasure;
- c. To maintain an office at such place or places in the State as it may designate;
- d. To sue and be sued in its own name;
- e. To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act. All this property shall be exempt from taxation under chapter 4 of Title 54 of the Revised Statutes; and
- f. To aid all initiatives for the improvement of vocational, technical, and occupational education and to make recommendations to the State Board of Education concerning the county vocational schools.

5. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 303

AN ACT concerning fees for fish and game licenses and supplementing Title 23 of the Revised Statutes.

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

C.23:3-1e Members of New Jersey National Guard exempt from certain fees.

1. Notwithstanding any law, rule, or regulation to the contrary, no fee, including application fees and issuance fees, may be charged of an applicant for a license, permit, stamp, tag, or certificate to hunt, fish, trap, or otherwise lawfully take fish, game, or any other wildlife in the State, who is an active member of the New Jersey National Guard who has completed Initial Active Duty Training.

The Division of Fish, Game and Wildlife shall prescribe by regulation the types of evidence that may be used to qualify persons for the benefits of this section.

As used in this act, "Initial Active Duty Training" means Basic Military Training, for members of the New Jersey Air National Guard, and Basic Combat Training and Advanced Individual Training, for members of the New Jersey Army National Guard.

C.23:3-1f Certification of reduction in "hunters' and anglers' license fund" for free NG licensees.

2. At the end of each fiscal year, the Director of the Division of Fish, Game and Wildlife shall certify to the Director of the Division of Budget and Accounting in the Department of the Treasury the amount that the "hunters' and anglers' license fund" has been reduced as a result of any license issued without charge pursuant to section 1 of this act. An amount equal to the amount certified shall be appropriated each year from the General Fund to the "hunters' and anglers' license fund" for additional operating costs.

3. This act shall take effect 90 days after enactment.

Approved December 23, 1993.

CHAPTER 304

AN ACT concerning admission fees for State parks and forests and amending P.L.1983, c.324.

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

1. Section 12 of P.L.1983, c.324 (C.13:1L-12) is amended to read as follows:

C.13:1L-12 Free admission for elderly, disabled, members of New Jersey National Guard.

12. The department shall not charge an admission fee for entrance into a State park or forest by any resident of the State of 62 or more years of age or who is totally disabled or who is an active member of the New Jersey National Guard who has completed Initial Active Duty Training. The department shall prescribe by regulation the types of evidence that may be used to qualify persons for the benefits of this subsection.

As used in this section, "Initial Active Duty Training" means Basic Military Training, for members of the New Jersey Air National Guard, and Basic Combat Training and Advanced Individual Training, for members of the New Jersey Army National Guard.

2. This act shall take effect 90 days after enactment.

Approved December 23, 1993.

CHAPTER 305

AN ACT concerning general public assistance and supplementing P.L.1947, c.156.

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

C.44:8-117.1 Municipality authorized to establish staffing level of welfare department.

1. Notwithstanding any provisions of law to the contrary, the governing body of a municipality shall have the authority to establish staffing levels for the municipality's welfare department for the purpose of administering public assistance pursuant to the "General Public Assistance Law," P.L.1947, c.156 (C.44:8-107 et seq.).

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 306

AN ACT concerning the adoption of subcodes under the State Uniform Construction Code and amending P.L.1975, c.217.

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

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

C.52:27D-123 State Uniform Construction Code; adoption.

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

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

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

These subcodes shall be adoptions of the model codes of the Building Officials and Code Administrators International, Inc., the National Electrical Code, and the National Standard Plumbing Code, provided that for good reasons, the commissioner may adopt as a subcode a model code or standard of some other nationally recognized organization upon a finding that such model code or standard promotes the purposes of this act. The

initial adoption of a model code or standard as a subcode shall constitute adoption of subsequent edition year publications of the model code or standard organization. Adoption of publications shall not occur more frequently than once every three years; provided, however, that a revision or amendment may be adopted at any time in the event that the commissioner finds that there exists an imminent peril to the public health, safety or welfare.

The commissioner shall be authorized to adopt a barrier free subcode or to supplement or revise any model code adopted hereunder, for the purpose of insuring that adequate and sufficient features are available in buildings or structures so as to make them accessible to and usable by the physically handicapped.

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

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

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

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

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

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

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

2. This act shall take effect immediately and shall apply to the adoption of subsequent edition year publications of a model code or standard organization effective on or after the date on which this act takes effect.

Approved December 23, 1993.

CHAPTER 307

AN ACT concerning seat belts and seat heights on school buses and amending P.L.1992, c.92.

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

1. Section 3 of P.L.1992, c.92 is amended to read as follows:

3. This act shall take effect immediately, but section 1 shall apply only to school buses with a chassis manufacture date of October, 1992 or thereafter.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 308

AN ACT concerning the administration of medication for certain school pupils and supplementing chapter 40 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:40-12.3 Self-administration of medication by pupil permitted.

1. A board of education may permit the self-administration of medication by a pupil for asthma or other potentially life-threatening illnesses provided that:

a. the parents or guardians of the pupil provide to the board of education written authorization for the self-administration of medication;

b. the parents or guardians of the pupil provide to the board of education written certification from the physician of the pupil that the pupil has asthma or another potentially life-threatening illness and is capable of, and has been instructed in, the proper method of self-administration of medication;

c. the board informs the parents or guardians of the pupil in writing that the district and its employees or agents shall incur no liability as a result of any injury arising from the self-administration of medication by the pupil;

d. the parents or guardians of the pupil sign a statement acknowledging that the district shall incur no liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the district and its employees or agents against any claims arising out of the self-administration of medication by the pupil; and

e. the permission is effective for the school year for which it is granted and is renewed for each subsequent school year upon fulfillment of the requirements in subsections a. through d. of this section.

C.18A:40-12.4 Rules, regulations.

2. a. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the State Board of Education shall promulgate such rules and regulations as it deems necessary no later than six months after the effective date of this act.

b. A board of education shall not be prohibited from permitting the administration of medication pursuant to section 1 of this act prior to the promulgation of rules and regulations by the State Board of Education.

3. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 309

AN ACT concerning early intervention services, supplementing Title 26 of the Revised Statutes and repealing section 3 of P.L.1981, c.415.

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

C.26:1A-36.6 Findings, declarations.

1. The Legislature finds and declares that:

a. It is in the best interests of the State to provide a comprehensive system of early intervention services to support infants and toddlers with disabilities, those at risk for disability, and their families, that is built on existing social networks, and naturally occurring supports such as community associations and extended families which promote the inclusion of the child and the family within the community;

b. Infants and toddlers with disabilities are uniquely dependent on their families for survival and nurturance, and while service systems and the personnel within those systems may fluctuate, a family is the only common thread in a child's life;

c. There is an urgent need to enhance the development of infants and toddlers with disabilities to minimize their potential for developmental delay and to enhance the capacity for families to meet the needs of these infants and toddlers;

d. There is also a need to reduce the education costs to our society, reduce costs associated with reliance on social services, minimize the likelihood of institutionalization, reduce health care costs and improve the long-term health and potential for future employability and independence of infants and toddlers with disabilities;

e. No one agency or discipline can meet the complex needs of infants with disabilities and their families, and services to infants and toddlers with disabilities must be comprehensive and multidisciplinary and must be coordinated so as to assure access and assist families in obtaining needed information and encouraging advocacy on their behalf; and

f. Services and strategies to assist and support families must respect autonomy, interdependence and decision-making in a way which reflects the unique racial, ethnic, cultural and social-economic experiences and background of a family.

C.26:1A-36.7 Early intervention services established.

2. The Department of Health, in conjunction with the Departments of Education and Human Services, shall establish a Statewide system of early intervention services for eligible infants and toddlers from birth to age two, inclusive, in accordance with Part H of the "Individuals with Disabilities Education Act," Pub.L.91-230 (20 U.S.C. §1471 et seq.).

C.26:1A-36.8 Rules, regulations.

3. The Department of Health, in consultation with the Departments of Education and 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 this act.

Repealer.

4. Section 3 of P.L.1981, c.415 (C.18A:46-6.2) is repealed.

5. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 310

A SUPPLEMENT to "An Act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1994 and regulating the disbursement thereof," approved June 29, 1993 (P.L.1993, c.155).

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

1. Upon certification by the Director of the Division of Budget and Accounting in the Department of the Treasury that federal funds to support the expenditures listed below are available, the following sum is appropriated:

FEDERAL FUNDS
46 DEPARTMENT OF HEALTH
20 *Physical and Mental Health*
21 *Health Services*

03-4230 Epidemiology, Environmental and Occupational Health Services	\$1,600,000
Special Purpose:	
Tuberculosis services	(\$1,600,000)

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 311

AN ACT permitting the county board of freeholders to extend the term of office of the county administrator and amending N.J.S.40A:9-42.

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

1. N.J.S.40A:9-42 is amended to read as follows:

County administrator.

40A:9-42. The board of chosen freeholders of any county, other than a county having adopted a form of government pursuant to the provisions of P.L.1972, c.154 (C.40:41A-1 et seq.), may by resolution create the office of county administrator, to act as the executive or administrative officer for the board and to have such executive and administrative powers, perform such executive and administrative duties and to receive such compensation as the resolution creating such office shall provide and as may from time to time otherwise be directed by the board by resolution.

In any county creating the position of county administrator the board by majority vote of all its members shall appoint some suitably qualified person to such office for a term of either three, four or five years, as determined by the board of freeholders at the time of the appointment, and until appointment and qualification of his successor.

2. This act shall take effect immediately and shall apply to the appointment and reappointment of persons to the position of county administrator on and after the effective date of this act.

Approved December 23, 1993.

CHAPTER 312

AN ACT excluding certain professional services from employment subject to unemployment compensation and temporary disability contributions and amending R.S.43:21-19.

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

1. R.S.43:21-19 is amended to read as follows:

Definitions.

43:21-19. Definitions. As used in this chapter (R.S.43:21-1 et seq.), unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid during a calendar year (regardless of when earned) by an employer for employment.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three or five preceding calendar years, whichever average is higher, except that any year or years throughout which an employer has had no "annual payroll" because of military service shall be deleted from the reckoning; the "average annual payroll" in such case is to be determined on the basis of the prior three or five calendar years in each of which the employer had an "annual payroll" in the operation of his business, if the employer resumes his business within 12 months after separation, discharge or release from such service, under conditions other than dishonorable, and makes application to have his "average annual payroll" determined on the basis of such deletion within 12 months after he resumes his business; provided, however, that "average annual payroll" solely for the purposes of paragraph (3) of subsection (e) of R.S.43:21-7 means the average of the annual payrolls of any employer on which he paid contributions to the State disability benefits fund for the last three or five preceding calendar years, whichever average is higher; provided further that only those wages be included on which employer contributions have been paid on or before January 31 (or the next succeeding day if such January 31 is a Saturday or Sunday) immediately preceding the beginning of the 12-month period for which the employer's contribution rate is computed.

(b) "Benefits" means the money payments payable to an individual, as provided in this chapter (R.S.43:21-1 et seq.), with respect to his unemployment.

(c) (1) "Base year" with respect to benefit years commencing on or after January 1, 1953, shall mean the 52 calendar weeks ending with the second week immediately preceding an individual's benefit year. "Base year" with respect to benefit years commencing on or after July 1, 1986, shall mean the first four of the last five completed calendar quarters immediately preceding an individual's benefit year.

(2) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and the individual

files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period defined as a period of disability by section 3 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-27). An individual who files a claim under the provisions of this paragraph (2) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

(3) With respect to a benefit year commencing on or after June 1, 1990 for an individual who immediately preceding the benefit year was subject to a disability compensable under the provisions of the workers' compensation law (chapter 15 of Title 34 of the Revised Statutes), "base year" shall mean the first four of the last five completed calendar quarters immediately preceding the individual's period of disability, if the period of disability was not longer than two years, if the employment held by the individual immediately preceding the period of disability is no longer available at the conclusion of that period and if the individual files a valid claim for unemployment benefits after the conclusion of that period. For the purposes of this paragraph, "period of disability" means the period from the time at which the individual becomes unable to work because of the compensable disability until the time that the individual becomes able to resume work and continue work on a permanent basis. An individual who files a claim under the provisions of this paragraph (3) shall not be regarded as having left work voluntarily for the purposes of subsection (a) of R.S.43:21-5.

(d) "Benefit year" with respect to any individual means the 364 consecutive calendar days beginning with the day on, or as of, which he first files a valid claim for benefits, and thereafter beginning with the day on, or as of, which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with subsection (a) of R.S.43:21-6 shall be deemed to be a "valid claim" for the purpose of this subsection if (1) he is unemployed for the week in which, or as of which, he files a claim for benefits; and (2) he has fulfilled the conditions imposed by subsection (e) of R.S.43:21-4.

(e) (1) "Division" means the Division of Unemployment and Temporary Disability Insurance of the Department of Labor, and any transaction or exercise of authority by the director of the division thereunder, or under this chapter (R.S.43:21-1 et seq.), shall be deemed to be performed by the division.

(2) "Controller" means the Office of the Assistant Commissioner for Finance and Controller of the Department of Labor, established by the 1982 Reorganization Plan of the Department of Labor.

(f) "Contributions" means the money payments to the State Unemployment Compensation Fund, required by R.S.43:21-7. "Payments in lieu of contributions" means the money payments to the State Unemployment Compensation Fund by employers electing or required to make payments in lieu of contributions, as provided in section 3 or section 4 of P.L.1971, c.346 (C.43:21-7.2 or 43:21-7.3).

(g) "Employing unit" means the State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any individual or type of organization, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this chapter (R.S.43:21-1 et seq.). Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter (R.S.43:21-1 et seq.), whether such individual was hired or paid directly by such employing unit or by such agent or employee; provided the employing unit had actual or constructive knowledge of the work.

(h) "Employer" means:

(1) Any employing unit which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets thereof, of another which, at the time of such acquisition, was an employer subject to this chapter (R.S.43:21-1 et seq.);

(3) Any employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another

employing unit and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units is owned or controlled (by legally enforceable means or otherwise), directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit or interest, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit for which service in employment as defined in R.S.43:21-19 (i) (1) (B) (i) is performed after December 31, 1971; and as defined in R.S.43:21-19 (i) (1) (B) (ii) is performed after December 31, 1977;

(6) Any employing unit for which service in employment as defined in R.S.43:21-19 (i) (1) (C) is performed after December 31, 1971 and which in either the current or the preceding calendar year paid remuneration for employment in the amount of \$1,000.00 or more;

(7) Any employing unit not an employer by reason of any other paragraph of this subsection (h) for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or which, as a condition for approval of the "unemployment compensation law" for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter (R.S.43:21-1 et seq.);

(8) (Deleted by amendment; P.L.1977, c.307.)

(9) (Deleted by amendment; P.L.1977, c.307.)

(10) (Deleted by amendment; P.L.1977, c.307.)

(11) Any employing unit subject to the provisions of the Federal Unemployment Tax Act within either the current or the preceding calendar year, except for employment hereinafter excluded under paragraph (7) of subsection (i) of this section;

(12) Any employing unit for which agricultural labor in employment as defined in R.S.43:21-19 (i) (1) (I) is performed after December 31, 1977;

(13) Any employing unit for which domestic service in employment as defined in R.S.43:21-19 (i) (1) (J) is performed after December 31, 1977;

(14) Any employing unit which having become an employer under the "unemployment compensation law" (R.S.43:21-1 et seq.), has not under R.S.43:21-8 ceased to be an employer; or for the effective period of its election pursuant to R.S.43:21-8, any other employing unit which has elected to become fully subject to this chapter (R.S.43:21-1 et seq.).

(i) (1) "Employment" means:

(A) Any service performed prior to January 1, 1972, which was employment as defined in the "unemployment compensation law" (R.S.43:21-1 et seq.) prior to such date, and, subject to the other provisions of this subsection, service performed on or after January 1, 1972, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

(B) (i) Service performed after December 31, 1971 by an individual in the employ of this State or any of its instrumentalities or in the employ of this State and one or more other states or their instrumentalities for a hospital or institution of higher education located in this State, if such service is not excluded from "employment" under paragraph (D) below.

(ii) Service performed after December 31, 1977, in the employ of this State or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of the foregoing and one or more other states or political subdivisions, if such service is not excluded from "employment" under paragraph (D) below.

(C) Service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization, which is excluded from "employment" as defined in the Federal Unemployment Tax Act, solely by reason of section 3306 (c) (8) of that act, if such service is not excluded from "employment" under paragraph (D) below.

(D) For the purposes of paragraphs (B) and (C), the term "employment" does not apply to services performed

(i) In the employ of (I) a church or convention or association of churches, or (II) an organization, or school which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education, and after December 31, 1977, in the employ of a governmental entity referred to in R.S.43:21-19 (i) (1) (B), if such service is performed by an individual in the exercise of duties

(aa) as an elected official;

(bb) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(cc) as a member of the State National Guard or Air National Guard;

(dd) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(ee) in a position which, under or pursuant to the laws of this State, is designated as a major nontenured policy making or advisory position, or a policy making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; or

(iv) By an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market;

(v) By an individual receiving work-relief or work-training as part of an unemployment work-relief or work-training program assisted in whole or in part by any federal agency or an agency of a state or political subdivision thereof; or

(vi) Prior to January 1, 1978, for a hospital in a State prison or other State correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution.

(E) The term "employment" shall include the services of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971 (except in Canada and in the case of the Virgin Islands, after December 31, 1971 and prior to January 1 of the year following the year in which the U.S. Secretary of Labor approves the unemployment compensation law of the Virgin Islands, under section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C. §3304 (a)) in the employ of an American employer (other than the service which is deemed employment under the provisions of R.S.43:21-19 (i) (2)

or (5) of the parallel provisions of another state's unemployment compensation law), if

(i) The American employer's principal place of business in the United States is located in this State; or

(ii) The American employer has no place of business in the United States, but (I) the American employer is an individual who is a resident of this State; or (II) the American employer is a corporation which is organized under the laws of this State; or (III) the American employer is a partnership or trust and the number of partners or trustees who are residents of this State is greater than the number who are residents of another state; or

(iii) None of the criteria of divisions (i) and (ii) of this subparagraph (E) is met but the American employer has elected to become an employer subject to the "unemployment compensation law" (R.S.43:21-1 et seq.) in this State, or the American employer having failed to elect to become an employer in any state, the individual has filed a claim for benefits, based on such service, under the law of this State;

(iv) An "American employer," for the purposes of this subparagraph (E), means (I) an individual who is a resident of the United States; or (II) a partnership, if two-thirds or more of the partners are residents of the United States; or (III) a trust, if all the trustees are residents of the United States; or (IV) a corporation organized under the laws of the United States or of any state.

(F) Notwithstanding R.S.43:21-19 (i) (2), all service performed after January 1, 1972 by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled, is within this State.

(G) Notwithstanding any other provision of this subsection, service in this State with respect to which the taxes required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the "unemployment compensation law" (R.S.43:21-1 et seq.).

(H) The term "United States" when used in a geographical sense in subsection R.S.43:21-19 (i) includes the states, the District of Columbia, the Commonwealth of Puerto Rico and, effective on the day after the day on which the U.S. Secretary of Labor

approves for the first time under section 3304 (a) of the Internal Revenue Code of 1986 (26 U.S.C §3304 (a)) an unemployment compensation law submitted to the Secretary by the Virgin Islands for such approval, the Virgin Islands.

(I) (i) Service performed after December 31, 1977 in agricultural labor in a calendar year for an entity which is an employer as defined in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of January 1 of such year; or for an employing unit which

(aa) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$20,000.00 or more for individuals employed in agricultural labor, or

(bb) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time.

(ii) For the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other entity shall be treated as an employee of such crew leader

(aa) if such crew leader holds a certification of registration under the Migrant and Seasonal Agricultural Worker Protection Act, Pub.L.97-470 (29 U.S.C.§1801 et seq.), or P.L.1971, c.192 (C.34:8A-7 et seq.); or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(bb) if such individual is not an employee of such other person for whom services were performed.

(iii) For the purposes of subparagraph (I) (i) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor or any other entity and who is not treated as an employee of such crew leader under (I) (ii)

(aa) such other entity and not the crew leader shall be treated as the employer of such individual; and

(bb) such other entity shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other entity) for the service in agricultural labor performed for such other entity.

(iv) For the purpose of subparagraph (I) (i), the term "crew leader" means an individual who

(aa) furnishes individuals to perform service in agricultural labor for any other entity;

(bb) pays (either on his own behalf or on behalf of such other entity) the individuals so furnished by him for the service in agricultural labor performed by them; and

(cc) has not entered into a written agreement with such other entity under which such individual is designated as an employee of such other entity.

(J) Domestic service after December 31, 1977 performed in the private home of an employing unit which paid cash remuneration of \$1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year.

(2) The term "employment" shall include an individual's entire service performed within or both within and without this State if:

(A) The service is localized in this State; or

(B) The service is not localized in any state but some of the service is performed in this State, and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(3) Services performed within this State but not covered under paragraph (2) of this subsection shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(4) Services not covered under paragraph (2) of this subsection and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) if the individual performing such services is a resident of this State and the employing unit for whom such services are performed files with the division an election that the entire service of such individual shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.).

(5) Service shall be deemed to be localized within a state if:

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to

the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(6) Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter (R.S.43:21-1 et seq.) unless and until it is shown to the satisfaction of the division that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(7) Provided that such services are also exempt under the Federal Unemployment Tax Act, as amended, or that contributions with respect to such services are not required to be paid into a state unemployment fund as a condition for a tax offset credit against the tax imposed by the Federal Unemployment Tax Act, as amended, the term "employment" shall not include:

(A) Agricultural labor performed prior to January 1, 1978; and after December 31, 1977, only if performed in a calendar year for an entity which is not an employer as defined in the "unemployment compensation law," (R.S.43:21-1 et seq.) as of January 1 of such calendar year; or unless performed for an employing unit which

(i) during a calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$20,000.00 or more to individuals employed in agricultural labor, or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment in time;

(B) Domestic service in a private home performed prior to January 1, 1978; and after December 31, 1977, unless performed in the private home of an employing unit which paid cash remuneration of \$1,000.00 or more to one or more individuals for such domestic service in any calendar quarter in the current or preceding calendar year;

(C) Service performed by an individual in the employ of his son, daughter or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(D) Service performed prior to January 1, 1978, in the employ of this State or of any political subdivision thereof or of any instrumentality of this State or its political subdivisions, except as provided in R.S.43:21-19 (i) (1) (B) above, and service in the employ of the South Jersey Port Corporation or its successors;

(E) Service performed in the employ of any other state or its political subdivisions or of an instrumentality of any other state or states or their political subdivisions to the extent that such instrumentality is with respect to such service exempt under the Constitution of the United States from the tax imposed under the Federal Unemployment Tax Act, as amended, except as provided in R.S.43:21-19 (i) (1) (B) above;

(F) Service performed in the employ of the United States Government or of any instrumentality of the United States except under the Constitution of the United States from the contributions imposed by the "unemployment compensation law," except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services; provided that if this State shall not be certified for any year by the Secretary of Labor of the United States under section 3304 of the federal Internal Revenue Code of 1986 (26 U.S.C. §3304), the payments required of such instrumentalities with respect to such year shall be refunded by the division from the fund in the same manner and within the same period as is provided in R.S.43:21-14 (f) with respect to contributions erroneously paid to or collected by the division;

(G) Services performed in the employ of fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association, or their dependents;

(H) Services performed as a member of the board of directors, a board of trustees, a board of managers, or a committee of any bank, building and loan, or savings and loan association, incorporated or organized under the laws of this State or of the United

States, where such services do not constitute the principal employment of the individual;

(I) Service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(J) Service performed by agents of mutual fund brokers or dealers in the sale of mutual funds or other securities, by agents of insurance companies, exclusive of industrial insurance agents or by agents of investment companies, if the compensation to such agents for such services is wholly on a commission basis;

(K) Services performed by real estate salesmen or brokers who are compensated wholly on a commission basis;

(L) Services performed in the employ of any veterans' organization chartered by Act of Congress or of any auxiliary thereof, no part of the net earnings of which organization, or auxiliary thereof, inures to the benefit of any private shareholder or individual;

(M) Service performed for or in behalf of the owner or operator of any theatre, ballroom, amusement hall or other place of entertainment, not in excess of 10 weeks in any calendar year for the same owner or operator, by any leader or musician of a band or orchestra, commonly called a "name band," entertainer, vaudeville artist, actor, actress, singer or other entertainer;

(N) Services performed after January 1, 1973 by an individual for a labor union organization, known and recognized as a union local, as a member of a committee or committees reimbursed by the union local for time lost from regular employment, or as a part-time officer of a union local and the remuneration for such services is less than \$1,000.00 in a calendar year;

(O) Services performed in the sale or distribution of merchandise by home-to-home salespersons or in-the-home demonstrators whose remuneration consists wholly of commissions or commissions and bonuses;

(P) Service performed in the employ of a foreign government, including service as a consular, nondiplomatic representative, or other officer or employee;

(Q) Service performed in the employ of an instrumentality wholly owned by a foreign government if (i) the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and (ii) the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose

instrumentality exemption is claimed, grants an equivalent exemption with respect to similar services performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(R) Service in the employ of an international organization entitled to enjoy the privileges, exemptions and immunities under the International Organizations Immunities Act (22 U.S.C. §288 et seq.);

(S) Service covered by an election duly approved by an agency charged with the administration of any other state or federal unemployment compensation or employment security law, in accordance with an arrangement pursuant to R.S.43:21-21 during the effective period of such election;

(T) Service performed in the employ of a school, college, or university if such service is performed (i) by a student enrolled at such school, college, or university on a full-time basis in an educational program or completing such educational program leading to a degree at any of the severally recognized levels, or (ii) by the spouse of such a student, if such spouse is advised at the time such spouse commences to perform such service that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance;

(U) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(V) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital; service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school approved under the laws of this State; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school approved pursuant to the laws of this State;

(W) Services performed after the effective date of this amendatory act by agents of mutual benefit associations if the compensation to such agents for such services is wholly on a commission basis;

(X) Services performed by operators of motor vehicles weighing 18,000 pounds or more, licensed for commercial use and used for the highway movement of motor freight, who own their equipment or who lease or finance the purchase of their equipment through an entity which is not owned or controlled directly or indirectly by the entity for which the services were performed and who were compensated by receiving a percentage of the gross revenue generated by the transportation move or by a schedule of payment based on the distance and weight of the transportation move;

(Y) Services performed by a certified shorthand reporter certified pursuant to P.L.1940, c.175 (C.45:15B-1 et seq.), provided to a third party by the reporter who is referred to the third party pursuant to an agreement with another certified shorthand reporter or shorthand reporting service, on a freelance basis, compensation for which is based upon a fee per transcript page, flat attendance fee, or other flat minimum fee, or combination thereof, set forth in the agreement;

(Z) Services performed, using facilities provided by a travel agent, by a person, commonly known as an outside travel agent, who acts as an independent contractor, is paid on a commission basis, sets his own work schedule and receives no benefits, sick leave, vacation or other leave from the travel agent owning the facilities.

(8) If one-half or more of the services in any pay period performed by an individual for an employing unit constitutes employment, all the services of such individual shall be deemed to be employment; but if more than one-half of the service in any pay period performed by an individual for an employing unit does not constitute employment, then none of the service of such individual shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than 31 consecutive days for which a payment for service is ordinarily made by an employing unit to individuals in its employ.

(9) Services performed by the owner of a limousine franchise (franchisee) shall not be deemed to be employment subject to the "unemployment compensation law," R.S.43:21-1 et seq., with regard to the franchisor if:

(A) The limousine franchisee is incorporated;

(B) The franchisee is subject to regulation by the Interstate Commerce Commission;

(C) The limousine franchise exists pursuant to a written franchise arrangement between the franchisee and the franchisor as defined by section 3 of P.L.1971, c.356 (C.56:10-3); and

(D) The franchisee registers with the Department of Labor and receives an employer registration number.

(j) "Employment office" means a free public employment office, or branch thereof operated by this State or maintained as a part of a State-controlled system of public employment offices.

(k) (Deleted by amendment, P.L.1984, c.24.)

(l) "State" includes, in addition to the states of the United States of America, the District of Columbia, the Virgin Islands and Puerto Rico.

(m) "Unemployment."

(1) An individual shall be deemed "unemployed" for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate, including any week during which he is on vacation without pay; provided such vacation is not the result of the individual's voluntary action, except that for benefit years commencing on or after July 1, 1984, an officer of a corporation, or a person who has more than a 5% equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation shall not be deemed to be unemployed in any week during the individual's term of office or ownership in the corporation.

(2) The term "remuneration" with respect to any individual for benefit years commencing on or after July 1, 1961, and as used in this subsection, shall include only that part of the same which in any week exceeds 20% of his weekly benefit rate (fractional parts of a dollar omitted) or \$5.00, whichever is the larger.

(3) An individual's week of unemployment shall be deemed to commence only after the individual has filed a claim at an unemployment insurance claims office, except as the division may by regulation otherwise prescribe.

(n) "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this chapter (R.S.43:21-1 et seq.), from which administrative expenses under this chapter (R.S.43:21-1 et seq.) shall be paid.

(o) "Wages" means remuneration paid by employers for employment. If a worker receives gratuities regularly in the course of his employment from other than his employer, his "wages" shall also include the gratuities so received, if reported in writing to his employer in accordance with regulations of the division, and if not so reported, his "wages" shall be determined

in accordance with the minimum wage rates prescribed under any labor law or regulation of this State or of the United States, or the amount of remuneration actually received by the employee from his employer, whichever is the higher.

(p) "Remuneration" means all compensation for personal services, including commission and bonuses and the cash value of all compensation in any medium other than cash.

(q) "Week" means for benefit years commencing on or after October 1, 1984, the calendar week ending at midnight Saturday, or as the division may by regulation prescribe.

(r) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30, or December 31.

(s) "Investment company" means any company as defined in subsection a. of section 1 of P.L.1938, c.322 (C.17:16A-1).

(t) (1) "Base week" for a benefit year commencing prior to October 1, 1984, means, except as otherwise provided in paragraph (2) of this subsection, any calendar week of an individual's base year during which he earned in employment from an employer remuneration equal to not less than \$30.00. "Base week" for a benefit year commencing on or after October 1, 1984 and prior to October 1, 1985 means any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration equal to not less than 15% of the Statewide average weekly remuneration defined in subsection (c) of R.S.43:21-3, which shall be adjusted to the next higher multiple of \$1.00 if not already a multiple thereof.

"Base week" for a benefit year commencing on or after October 1, 1985 means, except as otherwise provided in paragraph (2) of this subsection, any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration equal to not less than 20% of the Statewide average weekly remuneration defined in subsection (c) of R.S.43:21-3 which shall be adjusted to the next higher multiple of \$1.00 if not already a multiple thereof; provided if in any calendar week an individual is in employment with more than one employer, he may in such calendar week establish a base week with respect to each such employer from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (1) during such week.

(2) "Base week," with respect to an individual claiming benefits on the basis of service performed in the production and harvesting of agricultural crops, means, for a benefit year com-

mencing on or after October 1, 1984 and before January 1, 1985, any calendar week of an individual's base year during which the individual earned in employment from an employer remuneration equal to not less than \$30.00, except that if in any calendar week an individual subject to this paragraph is in employment with more than one employer, the individual may in that calendar week establish a base week with respect to each of the employers from whom the individual earns remuneration equal to not less than the amount defined in this paragraph (2) during that week.

(u) "Average weekly wage" means the amount derived by dividing an individual's total wages received during his base year base weeks (as defined in subsection (t) of this section) from that most recent base year employer with whom he has established at least 20 base weeks, by the number of base weeks in which such wages were earned. In the event that such claimant had no employer in his base year with whom he had established at least 20 base weeks, then such individual's average weekly wage shall be computed as if all of his base week wages were received from one employer and as if all his base weeks of employment had been performed in the employ of one employer.

For the purpose of computing the average weekly wage, the monetary alternative in subsection (e) of R.S.43:21-4 shall only apply in those instances where the individual did not have at least 20 base weeks in the base year. For benefit years commencing on or after July 1, 1986, "average weekly wage" means the amount derived by dividing an individual's total base year wages by the number of base weeks worked by the individual during the base year; provided that for the purpose of computing the average weekly wage, the maximum number of base weeks used in the divisor shall be 52.

(v) "Initial determination" means, subject to the provisions of R.S.43:21-6 (b) (2) and (3), a determination of benefit rights as measured by an eligible individual's base year employment with a single employer covering all periods of employment with that employer during the base year. For benefit years commencing prior to July 1, 1986, subject to the provisions of R.S.43:21-3 (d) (3), if an individual has been in employment in his base year with more than one employer, no benefits shall be paid to that individual under any successive initial determination until his benefit rights have been exhausted under the next preceding initial determination.

(w) "Last date of employment" means the last calendar day in the base year of an individual on which he performed services in employment for a given employer.

(x) "Most recent base year employer" means that employer with whom the individual most recently, in point of time, performed service in employment in the base year.

(y) (1) "Educational institution" means any public or other non-profit institution (including an institution of higher education):

(A) In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor (s) or teacher (s);

(B) Which is approved, licensed or issued a permit to operate as a school by the State Department of Education or other government agency that is authorized within the State to approve, license or issue a permit for the operation of a school; and

(C) Which offers courses of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation.

(2) "Institution of higher education" means an educational institution which:

(A) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(B) Is legally authorized in this State to provide a program of education beyond high school;

(C) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(D) Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this State are institutions of higher education for purposes of this section.

(z) "Hospital" means an institution which has been licensed, certified or approved under the law of this State as a hospital.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 313

AN ACT concerning bidding requirements on State transportation contracts and amending R.S.27:7-31 and P.L.1979, c.150.

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

1. R.S.27:7-31 is amended to read as follows:

Proposal bond to accompany bid; amount; contractor's bond.

27:7-31. A proposal bond in an amount, not to exceed 50% of the bid, to be determined by the commissioner, executed by the contractor with such sureties as shall be approved by the commissioner in favor of the State of New Jersey, shall accompany each bid and shall be held as security for the faithful performance of the contractor in that, if awarded the contract, the bidder will deliver the contract within 10 working days after the award, properly executed and secured by satisfactory bonds in accordance with the provisions of N.J.S.2A:44-143 to N.J.S.2A:44-147 and specifications for the project. The commissioner may require in addition to the proposal bond such additional evidence of the ability of a contractor to perform the work required by the contract as the commissioner may deem necessary and advisable.

2. Section 11 of P.L.1979, c.150 (C.27:25-11) is amended to read as follows:

C.27:25-11 Purchases, contracts or agreements; award; advertisement for bids; exemptions; bid bond; qualification of bidders.

11. a. All purchases, contracts or agreements pursuant to this act shall be made or awarded directly by the corporation, except as otherwise provided in this act, only after public advertisement for bids therefor, in the manner provided in this act, notwithstanding the provisions to the contrary of P.L.1948, c.92 (C.52:18A-1 et seq.) and chapters 25, 32, 33, 34 and 35 of Title 52 of the Revised Statutes.

b. Whenever advertising is required: (1) specifications and invitations for bids shall permit such full and free competition as is consistent with the procurement of supplies and services necessary to meet the requirements of the corporation; (2) the advertisement for bids shall be in such newspaper or newspapers selected by the corporation as will best give notice thereof to bid-

ders and shall be sufficiently in advance of the purchase or contract to promote competitive bidding; (3) the advertisement shall designate the time and place when and where sealed proposals shall be received and publicly opened and read, the amount of the cash, certified check, cashier's check or bank check, if any, which shall accompany each bid, and such other terms as the corporation may deem proper.

c. The corporation may reject any or all bids not in accord with the advertisement of specifications, or may reject any or all bids if the price of the work materials is excessively above the estimate cost or when the corporation shall determine that it is in the public interest to do so. The corporation shall prepare a list of the bids, including any rejected and the cause therefor. The corporation may accept bids containing minor informalities. Awards shall be made by the corporation with reasonable promptness by written notice to the responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the State, price and other factors considered.

d. A bid bond in an amount, not to exceed 50% of the bid, to be determined by the corporation with such sureties as shall be approved by the corporation in favor of the State of New Jersey, or a deposit consisting of a cashier's check, certified check or letter of credit in an amount set forth by the corporation, shall accompany each bid and shall be held as security for the faithful performance of the contractor in that, if awarded the contract, the bidder will deliver the contract within 10 working days after the notice, of award, properly executed and secured by satisfactory bonds in accordance with the provisions of N.J.S.2A:44-143 through N.J.S.2A:44-147 and specifications for the project. The corporation may require in addition to the bid bond or deposit such additional evidence of the ability of a contractor to perform the work required by the contract as it may deem necessary and advisable. All bid bonds or deposits which have been delivered with the bids, except those of the two lowest responsible bidders, shall be returned within 30 working days after such bids are received.

e. If the bidder fails to provide a satisfactory bid bond or deposit as provided in subsection d. of this section, the bid shall be rejected.

f. The corporation shall determine the terms and conditions of the various types of agreements or contracts, including provisions for adequate security, the time and amount or percentage of each payment thereon and the amount to be withheld pending completion of the contract, and it shall issue and publish rules and

regulations concerning such terms and conditions, standard contract forms and such other rules and regulations concerning purchasing or procurement, not inconsistent with any applicable law, as it may deem advisable to promote competition and to protect the public interest.

g. Any purchase, contract or agreement pursuant to subsection a. hereof may be made, negotiated or awarded by the corporation without advertising under the following circumstances:

(1) When the aggregate amount involved does not exceed the amount determined pursuant to section 2 of P.L.1954, c.48 (C.52:34-7); or

(2) In all other cases when the corporation seeks:

(a) To acquire public or private entities engaged in the provision of public transportation service, used public transportation equipment or existing public transportation facilities or rights of way; or

(b) To acquire subject matter which is that described in section 4 of P.L.1954, c.48 (C.52:34-9); or

(c) To make a purchase or award or make a contract or agreement under the circumstances described in section 5 of P.L.1954, c.48 (C.52:34-10); or

(d) To contract pursuant to section 6 of this act.

h. The corporation shall require that all persons proposing to submit bids on improvements to capital facilities and equipment shall first be classified by the corporation as to the character or amount or both of the work on which they shall be qualified to submit bids. Bids shall be accepted only from persons qualified in accordance with such classification.

3. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 314

AN ACT concerning business and school partnerships and supplementing chapter 54 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:54E-1 Short title.

1. This act shall be known and may be cited as the "Adopt a School Program."

C.18A:54E-2 Business advisory board; creation, membership.

2. Each county superintendent shall create a business advisory board or shall designate a Workforce Investment Board created by the State Employment and Training Commission in the Department of Labor or a Private Industry Council established pursuant to the Job Training and Partnership Act to perform the functions of the business advisory board under this act.

Membership on the business advisory board shall be open to interested local businesses which wish to assist students enrolled in a program involving vocational or technical training in a public secondary school or community college jointly engaged in such a program with a public secondary school. The county superintendent shall be chairman of the business advisory board, and the board shall meet monthly. The county superintendent shall appoint a program coordinator who shall be charged with administering the program at local board levels. All members of the board shall serve without compensation and for a three year term.

C.18A:54E-3 "Adopt a School Programs."

3. The board or council shall encourage and coordinate local business partnership "Adopt a School Programs" which may be instituted at public secondary schools, other than schools established under the provisions of chapter 54 of Title 18A of the New Jersey Statutes. The business partnership programs may include, but are not limited to, supplying materials, funding, offering work based learning opportunities including apprenticeships to students and providing volunteers for the classroom. Businesses entering into the "Adopt a School Program" pursuant to this act shall not seek reimbursement for any donation of time, money, materials or personnel from the State, a local school district or a community college.

C.18A:54E-4 Effectiveness rating, provision; curriculum changes, recommendations.

4. The board or council shall provide upon the request of the county superintendent a rating of the effectiveness of any program designed to prepare students for employment, based on the preparedness of students who are in their employment. The board shall also make recommendations to the local school board through the county superintendent regarding suggested curriculum changes or other methods to improve those programs designed to prepare students for employment in a vocation or technical field.

C.18A:54E-5 Contributions, effect on State aid.

5. Contributions provided under this act by local businesses shall in no way affect the amount of State aid entitlement of a local school district or community college.

6. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 315

AN ACT concerning speed limits on certain highways, and amending R.S.39:1-1 and R.S.39:4-98.

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

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

Words and phrases defined.

39:1-1. Words and phrases defined

As used in this subtitle, unless other meaning is clearly apparent from the language or context, or unless inconsistent with the manifest intention of the Legislature:

“Alley” means a public highway wherein the roadway does not exceed 12 feet in width.

“Authorized emergency vehicles” means vehicles of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety when operated in response to an emergency call.

“Automobile” includes all motor vehicles except motorcycles.

“Berm” means that portion of the highway exclusive of roadway and shoulder, bordering the shoulder but not to be used for vehicular travel.

“Business district” means that portion of a highway and the territory contiguous thereto, where within any 600 feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, office buildings, railroad stations, and public buildings which occupy at least 300

feet of frontage on one side or 300 feet collectively on both sides of the roadway.

“Car pool” means two or more persons commuting on a daily basis to and from work by means of a vehicle with a seating capacity of nine passengers or less.

“Commercial motor vehicle” includes every type of motor-driven vehicle used for commercial purposes on the highways, such as the transportation of goods, wares and merchandise, excepting such vehicles as are run only upon rails or tracks and vehicles of the passenger car type used for touring purposes or the carrying of farm products and milk, as the case may be.

“Commissioner” means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety of this State.

“Commuter van” means a motor vehicle having a seating capacity of not less than seven nor more than 15 adult passengers, in which seven or more persons commute on a daily basis to and from work and which vehicle may also be operated by the driver or other designated persons for their personal use.

“Crosswalk” means that part of a highway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the shoulder, or, if none, from the edges of the roadway; also, any portion of a highway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other marking on the surface.

“Dealer” includes every person actively engaged in the business of buying, selling or exchanging motor vehicles or motorcycles and who has an established place of business.

“Department” means the Division of Motor Vehicles in the Department of Law and Public Safety of this State acting directly or through its duly authorized officers or agents.

“Deputy commissioner” means deputy director of the Division of Motor Vehicles in the Department of Law and Public Safety.

“Deputy director” means deputy director of the Division of Motor Vehicles in the Department of Law and Public Safety.

“Director” means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

“Division” means the Division of Motor Vehicles in the Department of Law and Public Safety acting directly or through its duly authorized officers or agents.

"Driver" means the rider or driver of a horse, bicycle or motorcycle or the driver or operator of a motor vehicle, unless otherwise specified.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustible units or other ingredients in such proportions, quantities or packing that an ignition by fire, friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

"Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

"Flammable liquid" means any liquid having a flash point below 200° Fahrenheit, and a vapor pressure not exceeding 40 pounds.

"Gross weight" means the combined weight of a vehicle and a load thereon.

"High occupancy vehicle" or "HOV" means a vehicle which is used to transport two or more persons and shall include public transportation, car pool, van pool, and other vehicles as determined by regulation of the Department of Transportation.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Horse" includes mules and all other domestic animals used as draught animals or beasts of burden.

"Inside lane" means the lane nearest the center line of the roadway.

"Intersection" means the area embraced within the prolongation of the lateral curb lines or, if none, the lateral boundary lines of two or more highways which join one another at an angle, whether or not one such highway crosses another.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

"Leased motor vehicle" means any motor vehicle subject to registration in this State which:

- a. Is offered for rental or lease, without a driver, to be operated by the lessee, his agent or servant, for purposes other than the transportation of passengers for hire; and
- b. Is leased or rented for a period of one year or more following registration.

“Limited-access highway” means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway; and includes any highway designated as a “freeway” or “parkway” by authority of law.

“Local authorities” means every county, municipal and other local board or body having authority to adopt local police regulations under the Constitution and laws of this State, including every county governing body with relation to county roads.

“Magistrate” means any municipal court and the Superior Court, and any officer having the powers of a committing magistrate and the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

“Manufacturer” means a person engaged in the business of manufacturing or assembling motor vehicles, who will, under normal business conditions during the year, manufacture or assemble at least 10 new motor vehicles.

“Metal tire” means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

“Motorized bicycle” means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 cc. or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.

“Motorcycle” includes motorcycles, motor bikes, bicycles with motor attached and all motor-operated vehicles of the bicycle or tricycle type, except motorized bicycles as defined in this section, whether the motive power be a part thereof or attached thereto and having a saddle or seat with driver sitting astride or upon it or a platform on which the driver stands.

“Motor-drawn vehicle” includes trailers, semitrailers, or any other type of vehicle drawn by a motor-driven vehicle.

“Motor vehicle” includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

“Noncommercial truck” means every motor vehicle designed primarily for transportation of property, and which is not a “commercial vehicle.”

“Official traffic control devices” means all signs, signals, markings, and devices not inconsistent with this subtitle placed or

erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

“Omnibus” includes all motor vehicles used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses, if the same are not otherwise used in the transportation of passengers for hire.

“Operator” means a person who is in actual physical control of a vehicle or street car.

“Outside lane” means the lane nearest the curb or outer edge of the roadway.

“Owner” means a person who holds the legal title of a vehicle, or if a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee, lessee or mortgagor shall be deemed the owner for the purpose of this subtitle.

“Parking” means the standing or waiting on a street, road or highway of a vehicle not actually engaged in receiving or discharging passengers or merchandise, unless in obedience to traffic regulations or traffic signs or signals.

“Passenger automobile” means all automobiles used and designed for the transportation of passengers, other than omnibuses and school buses.

“Pedestrian” means a person afoot.

“Person” includes natural persons, firms, copartnerships, associations, and corporations.

“Pneumatic tire” means every tire in which compressed air is designed to support the load.

“Pole trailer” means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads, such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

“Private road or driveway” means every road or driveway not open to the use of the public for purposes of vehicular travel.

“Railroad train” means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except street cars.

“Residence district” means that portion of a highway and the territory contiguous thereto, not comprising a business district, where within any 600 feet along such highway there are buildings in use for business or residential purposes which occupy 300 feet or more of frontage on at least one side of the highway.

“Ridesharing” means the transportation of persons in a motor vehicle, with a maximum carrying capacity of not more than 15 passengers, including the driver, where such transportation is incidental to the purpose of the driver. The term shall include such ridesharing arrangements known as car pools and van pools.

“Right-of-way” means the privilege of the immediate use of the highway.

“Road tractor” means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

“Roadway” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term “roadway” as used herein shall refer to any such roadway separately, but not to all such roadways, collectively.

“Safety zone” means the area or space officially set aside within a highway for the exclusive use of pedestrians, which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

“School bus” means every motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation for the transportation of children to or from school for secular or religious education, which complies with the regulations of the Department of Education affecting school buses, including “School Vehicle Type I” and “School Vehicle Type II” as defined below:

“School Vehicle Type I” means any vehicle with a seating capacity of 17 or more, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the Division of Motor Vehicles and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School Vehicle Type II" means any vehicle with a seating capacity of 16 or less, used to transport enrolled children, and adults only when serving as chaperones, to or from a school, school connected activity, day camp, summer day camp, nursery school, child care center, preschool center or other similar places of education. Such vehicle shall comply with the regulations of the Division of Motor Vehicles and either the Department of Education or the Department of Human Services, whichever is the appropriate supervising agency.

"School zone" means that portion of a highway which is either contiguous to territory occupied by a school building or is where school crossings are established in the vicinity of a school, upon which are maintained appropriate "school signs" in accordance with specifications adopted by the director and in accordance with law.

"School crossing" means that portion of a highway where school children are required to cross the highway in the vicinity of a school.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Shipper" means any person who shall deliver, or cause to be delivered, any commodity, produce or article for transportation as the contents or load of a commercial motor vehicle. In the case of a sealed ocean container, "shipper" shall not be construed to include any person whose activities with respect to the shipment are limited to the solicitation or negotiation of the sale, resale, or exchange of the commodity, produce or article within that container.

"Shoulder" means that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily to be used for vehicular travel.

"Sidewalk" means that portion of a highway intended for the use of pedestrians, between the curb line or the lateral line of a shoulder, or if none, the lateral line of the roadway and the adjacent right-of-way line.

"Sign." See "Official traffic control devices."

"Slow-moving vehicle" means a vehicle run at a speed less than the maximum speed then and there permissible.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

"Street" means the same as highway.

"Street car" means a car other than a railroad train, for transporting persons or property and operated upon rails principally within a municipality.

"Stop," when required, means complete cessation from movement.

"Stopping or standing," when prohibited, means any cessation of movement of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Suburban business or residential district" means that portion of highway and the territory contiguous thereto, where within any 1,320 feet along that highway there is land in use for business or residential purposes and that land occupies more than 660 feet of frontage on one side or collectively more than 660 feet of frontage on both sides of that roadway.

"Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

"Trackless trolley" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

"Traffic" means pedestrians, ridden or herded animals, vehicles, street cars, and other conveyances either singly, or together, while using any highway for purposes of travel.

"Traffic control signal" means a device, whether manually, electrically, mechanically, or otherwise controlled, by which traffic is alternately directed to stop and to proceed.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

"Truck" means every motor vehicle designed, used, or maintained primarily for the transportation of property.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

"Van pooling" means seven or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry seven to 15 adult passengers.

"Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting

devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles.

2. R.S.39:4-98 is amended to read as follows:

Rates of speed.

39:4-98. Rates of speed. Subject to the provisions of sections 39:4-96 and 39:4-97 of this Title and except in those instances where a lower speed is specified in this chapter, it shall be prima facie lawful for the driver of a vehicle to drive it at a speed not exceeding the following:

a. Twenty-five miles an hour, when passing through a school zone during recess, when the presence of children is clearly visible from the roadway, or while children are going to or leaving school, during opening or closing hours;

b. (1) Twenty-five miles an hour in any business or residential district;

(2) Thirty-five miles an hour in any suburban business or residential district;

c. Fifty miles an hour in all other locations.

Whenever it shall be determined upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, the Commissioner of Transportation, with reference to State highways, may by regulation and municipal or county authorities, with reference to highways under their jurisdiction, may by ordinance, in the case of municipal authorities, or by ordinance or resolution, in the case of county authorities, subject to the approval of the Commissioner of Transportation, except as otherwise provided in R.S.39:4-8, designate a reasonable and safe speed limit thereat which, subject to the provisions of R.S.39:4-96 and R.S.39:4-97, shall be prima facie lawful at all times or at such times as may be determined, when appropriate signs giving notice thereof are erected at such intersection, or other place or part of the highway. Appropriate signs giving notice of the speed limits authorized under the provisions of paragraph (1) of subsection b. and subsection c. of this section may be erected if the commissioner or the municipal or county authorities, as the case may be, so determine they are necessary. Appropriate signs giving notice of the speed limits authorized under the provisions of subsection a. and paragraph (2) of subsection b. of this section

shall be erected by the commissioner or the municipal or county authorities, as appropriate.

The driver of every vehicle shall, consistent with the requirements of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

The Commissioner of Transportation shall cause the erection and maintenance of signs at such points of entrance to the State as are deemed advisable, setting forth the lawful rates of speed, the wording of which shall be within his discretion.

3. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 316

AN ACT concerning certain annual reports and repealing N.J.S.59:14-1.

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

Repealer.

1. N.J.S.59:14-1 is repealed.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 317

AN ACT concerning foreign-money claims, adopting the Uniform Foreign-Money Claims Act, and repealing R.S.51:2-1.

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

C.2A:49A-1 Short title.

1. This act shall be known and may be cited as the “Uniform Foreign-Money Claims Act.”

C.2A:49A-2 Definitions.

2. As used in this act:

“Action” means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

“Bank-offered spot rate” means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

“Conversion date” means the banking day next preceding the date on which money, in accordance with this act, is:

- a. Paid to a claimant in an action or distribution proceeding;
- b. Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or
- c. Used to recoup, set-off, or counterclaim in different moneys in an action or distribution proceeding.

“Distribution proceeding” means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

“Foreign money” means money other than money of the United States of America.

“Foreign-money claim” means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

“Money” means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by inter-governmental agreement.

“Money of the claim” means the money determined as proper pursuant to section 5 of this act.

“Person” means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

“Rate of exchange” means the rate at which money of one country may be converted into money of another country in a free

financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

“Spot rate” means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

C.2A:49A-3 Applicability of act.

3. a. This act applies only to a foreign-money claim in an action or distribution proceeding.

b. This act applies to foreign-money issues even if other law under the conflict of laws rules of this State applies to other issues in the action or distribution proceeding.

C.2A:49A-4 Agreements by parties to transaction.

4. a. The effect of this act may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

b. Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

C.2A:49A-5 Proper money.

5. a. The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

b. If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) regularly used between the parties as a matter of usage or course of dealing;

(2) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) in which the loss was ultimately felt or will be incurred by the party claimant.

C.2A:49A-6 Determination of amount to be paid.

6. a. If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

b. If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

c. A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

C.2A:49A-7 Claim assertion; opposition; set-off.

7. a. A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

b. An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

c. A person may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

d. The determination of the proper money of the claim is a question of law.

C.2A:49A-8 Judgment, award on foreign-money claim; payment.

8. a. Except as provided in subsection c. of this section, a judgment or award on a foreign-money claim shall be stated in an amount of the money of the claim.

b. A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the

amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

c. Assessed costs shall be entered in United States dollars.

d. Each payment in United States dollars shall be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

e. A judgment or award made in an action or distribution proceeding on both (1) a defense, set-off, recoupment, or counterclaim and (2) the adverse party's claim, shall be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specify the rates of exchange used.

f. A judgment substantially complies with subsection a. of this section, if it is in the following form:

On this..... day of....., 199....., it is ORDERED that judgment be entered in favor of the Plaintiff and against the Defendant in the sum of (insert amount in the foreign money) with interest at the rate of (insert rate - see section 9 of this act) percent a year from the day of, 199....., or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

g. If a contract claim is of the type covered by subsections a. or b. of section 6 of this act, the judgment or award shall be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

h. A judgment shall be entered and indexed in foreign money in the same manner as other judgments, and has the same effect as a lien. It may be discharged by payment.

C.2A:49A-9 Governing rate of exchange.

9. The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its

claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

C.2A:49A-10 Pre-judgment, pre-award interest payable.

10. a. With respect to a foreign-money claim, recovery of pre-judgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection b. of this section, are matters of the substantive law governing the right to recovery under the conflict of laws rules of this State.

b. The court or arbitrator shall increase or decrease the amount of pre-judgment or pre-award interest otherwise payable in a judgment or award in foreign-money to the extent required by the law of this State governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

c. A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this State.

C.2A:49A-11 Entering, enforcing foreign judgment.

11. a. If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this State as enforceable, the enforcing judgment shall be entered as provided in section 8 of this act, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

b. A foreign judgment may be docketed in accordance with any rule or statute of this State providing a procedure for its recognition and enforcement.

c. A satisfaction or partial payment made upon the foreign judgment, on proof thereof, shall be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this State.

d. A judgment entered on a foreign-money claim only in United States dollars in another state shall be enforced in this State in United States dollars only.

C.2A:49A-12 Computations of value of assets, amount of foreign money claimed under legal process.

12. a. Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

b. For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dol-

lars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, shall be ascertained as provided in subsections c. and d. of this section.

c. A party seeking process, costs, bond, or other undertaking under subsection b. of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

d. A party seeking the process, costs, bond, or other undertaking under subsection b. of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

C.2A:49A-13 Substitution of new foreign money.

13. a. If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

b. If substitution occurs under subsection a. of this section after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

C.2A:49A-14 Principles of law supplement provisions of act.

14. Unless displaced by particular provisions of this act, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

C.2A:49A-15 Uniform construction of act.

15. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Repealer.

16. R.S.51:2-1 is repealed.

17. This act shall take effect on January 1st following its enactment and shall apply to actions and distribution proceedings commenced after its effective date.

Approved December 23, 1993.

CHAPTER 318

AN ACT concerning construction liens for improvements made to real property, amending N.J.S.2A:15-6, supplementing Title 2A of the New Jersey Statutes and repealing N.J.S.2A:44-64 through 2A:44-124, inclusive, and P.L.1979, c.301.

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

C.2A:44A-1 Short title.

1. This act shall be known and may be cited as the "Construction Lien Law."

C.2A:44A-2 Definitions.

2. As used in this act:

"Claimant" means a person, as defined in R.S.1:1-2, having the right to file a lien claim on real property pursuant to the provisions of this act.

"Contract" means any agreement, or amendment thereto, in writing, evidencing the respective responsibilities of the contracting parties, which, in the case of a supplier, shall include a delivery or order slip signed by the owner, contractor, or subcontractor having a direct contractual relation with a contractor, or an authorized agent of any of them.

"Contract price" means the amount specified in a contract for the provision of work, services, material or equipment.

“Contractor” means any person in direct privity of contract with the owner of real property for improvements thereto. A construction manager who enters into a single contract with an owner for the performance of all construction work within the scope of a construction manager’s contract, a construction manager who enters into a subcontract, or a construction manager who is designated as an owner’s agent without entering into a subcontract is also a “contractor” for the purposes of this act. A licensed architect, engineer or land surveyor who is not a salaried employee of the contractor or the owner, performing professional services related to the improvement of property in direct contract with the property owner shall be considered a “contractor” for the purposes of this act.

“County clerk” means the clerk of the county in which real property to be improved is situated.

“Equipment” means any machinery or other apparatus, including rental equipment delivered to the site to be improved or used on the site to be improved, for incorporation in the improved real property or for use in the construction of the improvement of the real property but not incorporated therein. A lien for equipment shall arise only for equipment used on site for the improvement of real property, including equipment installed in the improved real property. In the case of rental equipment, the amount of any lien shall be limited to the rental rates as set forth in the rental contract.

“Filing” means the lodging for record and indexing of the documents authorized to be filed or recorded pursuant to this act in the office of the county clerk, or, in the case of real property located in more than one county, in the office of the county clerk of each such county.

“Improvement” means any actual or proposed physical changes to real property by the provision of work or services by a contractor or subcontractor, pursuant to the terms of a contract, whether or not such physical change is undertaken, and includes the construction, reconstruction, alteration, repair, demolition or removal of any building or structure, any addition to a building or structure, or any construction or fixture necessary or appurtenant to a building or structure for use in conjunction therewith. “Improvement” includes excavation, digging, drilling, drainage, dredging, filling, irrigation, land clearance, grading or landscaping. “Improvement” shall not include the mining of minerals or removal of timber, gravel, soil, or sod which is not integral to or necessitated by the improvement to real property. “Improvement” shall not include public works or improvements to real property contracted for and awarded by a public entity. Any work or ser-

vices requiring a license for performance including, but not limited to, architectural, engineering, plumbing or electrical construction, shall not constitute an improvement unless performed by a licensed claimant.

“Interest in real property” means any ownership, possessory security or other enforceable interest, including, but not limited to, fee title, easement rights, covenants or restrictions, leases and mortgages.

“Lien” or “construction lien” means a lien on the owner’s interest in the real property arising pursuant to the provisions of this act.

“Material” means any goods delivered to, or used on the site to be improved, for incorporation in the improved real property, or for consumption as normal waste in construction operations; or for use on site in the construction or operation of equipment used in the improvement of the real property but not incorporated therein. The term “material” does not include fuel provided for use in motor vehicles or equipment delivered to or used on the site to be improved.

“Mortgage” means a loan which is secured by a lien on real property.

“Owner” or “owner of real property” means any person, including a tenant, with an estate or interest in real property who personally or through an authorized agent enters into a contract for improvement of the real property.

“Public entity” includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.

“Residential construction contract” means any written contract for the construction or improvement to a one- or two-family dwelling, or any portion of the dwelling, which shall include any residential unit in a condominium subject to the provisions of P.L.1969, c.257 (C.46:8B-1 et seq.), any residential unit in a housing cooperative, any residential unit contained in a fee simple townhouse development, any residential unit contained in a horizontal property regime as defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and any residential unit contained in a planned unit development as defined in section 3.3 of P.L.1975, c.291 (C.40:55D-6).

“Residential purchase agreement” means a written contract between a buyer and a seller for the purchase of a one- or two-family dwelling, any residential unit in a condominium subject to the provisions of P.L.1969, c.257 (C.46:8B-1 et seq.), any residential unit in a housing cooperative, any residential unit contained in a fee simple townhouse development, any residential unit contained in a horizontal property regime as defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and any residential unit

contained in a planned unit development as defined in section 3.3 of P.L.1975, c.291 (C.40:55D-6).

“Services” means professional services performed by a licensed architect, engineer or land surveyor who is not a salaried employee of the contractor, a subcontractor or the owner and who is in direct privity of contract with the owner for the preparation of plans, documents, studies, or the provision of other services by a licensed architect, engineer or land surveyor prepared in connection with a proposed or an actual physical change to real property, whether or not such physical change is undertaken.

“State” means the State of New Jersey and any office, department, division, bureau, board, commission or agency of the State.

“Subcontractor” means any person providing work or services in connection with the improvement of real property pursuant to a contract with a contractor or pursuant to a contract with a subcontractor in direct privity of contract with a contractor.

“Supplier” means any supplier of material or equipment, including rental equipment, having a direct privity of contract with an owner, contractor or subcontractor in direct privity of contract with a contractor. The term “supplier” shall not include a person who supplies fuel for use in motor vehicles or equipment delivered to or used on the site to be improved or a seller of personal property who has a security agreement providing a right to perfect either a security interest pursuant to Title 12A of the New Jersey Statutes or a lien against the motor vehicle pursuant to applicable law.

“Work” means any activity, including labor, performed in connection with the improvement of real property. The term “work” includes architectural, engineering or surveying services provided by salaried employees of a contractor or subcontractor, as part of the work of the contractor or subcontractor, provided, however, that the right to file a lien claim for those services shall be limited to the contractor or subcontractor.

C.2A:44A-3 Lien entitlement for work, services, etc.

3. Any contractor, subcontractor or supplier who provides work, services, material or equipment pursuant to a contract, shall be entitled to a lien for the value of the work or services performed, or materials or equipment furnished in accordance with the contract and based upon the contract price, subject to the provisions of sections 9 and 10 of this act. The lien shall attach to the interest of the owner in the real property. If a tenant contracts for improvement of the real property and the contract for

improvement has not been authorized in writing by the owner of a fee simple interest in the improved real property, the lien shall attach only to the leasehold interest of the tenant.

Nothing in this act shall be construed to limit the right of any claimant from pursuing any other remedy provided by law.

C.2A:44A-4 Lien for improvements; attachment.

4. Liens for the following improvements shall attach to real property only in the manner herein prescribed. In the case of an improvement:

a. Involving a dock, wharf, pier, bulkhead, return, jetty, piling, groin, boardwalk or pipeline above, on or below lands under waters within the State's jurisdiction, the lien shall be on the improvements together with the contracting owner's interest in the lots of land in front of or upon which the improvements are constructed and any interest of the contracting owner of the land in the land or waters in front of the land;

b. Involving removal of a building or structure or part of a building or structure from its situs and its relocation on other land, the lien shall be on the contracting owner's interest in the improved real property on which the building or structure has been relocated;

c. Involving excavation, drainage, dredging, landfill, irrigation work, construction of banks, making of channels, grading, filling, landscaping or the planting of any shrubs, trees or other nursery products, the lien shall be on the land to which the improvements are made, and shall not be upon the adjoining lands directly or indirectly benefited from the improvements.

C.2A:44A-5 Liens, certain; prohibited.

5. No liens shall attach nor shall a lien claim be filed:

a. For materials that have been furnished or delivered subject to a security agreement which has been entered into pursuant to Chapter 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101 et seq.);

b. For public works or improvements to real property contracted for and awarded by a public entity; provided, however, that nothing herein shall affect any right or remedy established pursuant to the "municipal mechanic's lien law," N.J.S.2A:44-125 et seq.;

c. For work, services, material or equipment furnished pursuant to a residential construction contract unless there is strict compliance with sections 20 and 21 of this act.

C.2A:44A-6 Filing lien claim.

6. A lien claim shall be signed, acknowledged and verified by oath of the claimant or, in the case of a partnership or corporation, a partner or duly authorized officer thereof, and filed with

the county clerk not later than 90 days following the date the last work, services, material or equipment was provided for which payment is claimed. No lien shall attach, or be enforceable under the provisions of this act and, in the case of a residential construction contract, compliance with sections 20 and 21 of this act, unless the lien claim is filed in the form, manner and within the time provided by this section and section 8 of this act, and a copy thereof served on the owner and, if any, the contractor and the subcontractor, against whom the claim is asserted, pursuant to section 7 of this act.

For purposes of this act, warranty or other service calls, or other work, materials or equipment provided after completion or termination of a claimant's contract shall not be used to determine the last day that work, services, material or equipment was provided.

C.2A:44A-7 Mailing of lien claim by claimant.

7. Within 10 business days following the filing of a lien claim, the claimant shall, by personal service or registered or certified mail, return receipt requested, postage prepaid, serve or mail a copy of the lien claim as prescribed in section 8 of this act to the last known business address or place of residence of the owner and, if any, of the contractor and the subcontractor, against whom the claim is asserted. Proof of timely mailing shall satisfy the requirement of service of the lien claim. The service of the lien claim provided for in this section shall be a condition precedent to enforcement of the lien; however, the service of the lien claim outside the prescribed time period shall not preclude enforceability unless the party not timely served proves by a preponderance of the evidence that the late service has materially prejudiced its position. Disbursement of funds by the owner, a contractor or a subcontractor, or the creation or conveyance of an interest in real property by the owner, without actual knowledge of the filing of the lien claim, shall constitute prima facie evidence that the party has been materially prejudiced.

C.2A:44A-8 Lien claim form.

8. The lien claim shall be filed in substantially the following form:

CONSTRUCTION LIEN CLAIM

TO THE CLERK, COUNTY OF :

In accordance with the terms and provisions of the "Construction Lien Law," P.L.1993, c.318 (C.2A:44A-1 et al.), notice is hereby given that:

1. (Name of claimant) of (address of claimant) has on (date) claimed a construction lien against the below stated real property of (owner against whose property the lien is claimed), in the

amount of (\$), for the value of the work, services, material or equipment provided in accordance with a contract with (name of contracting party with whom claimant has a contract) for the following work, services, materials or equipment:

- a.
- b.
- c. (etc.)

2. The amount due for work, services, materials or equipment delivery provided by claimant in connection with the improvement of the real property, and upon which this lien claim is based, is as follows:

Total contract amount: \$.....
 Amendments to contract: \$.....
 Total contract amount and
 amendments to contract: \$.....
 Less: Agreed upon credits: \$.....
 Contract amount paid
 to date: \$.....
 Amendments to contract
 amount paid to date: \$.....

TOTAL REDUCTIONS
 FROM CONTRACT
 AMOUNT AND AMEND-
 MENTS TO CONTRACT: \$.....

TOTAL LIEN
 CLAIM AMOUNT: \$.....

A Notice of Unpaid Balance and Right to File Lien (if any) was previously filed with the County Clerk of County on 19..... as No. in Book Page

3. This construction lien is claimed against the interest of (name) as (check one):

_____ Owner

_____ Lessee

_____ Other (describe): in that certain tract or parcel of land and premises described as Block, Lot, on the tax map of the of, County of, State of New

Jersey, for the improvement of which property the aforementioned work, services, materials or equipment was provided.

4. The work, services, materials or equipment was provided pursuant to the terms of a written contract (or, in the case of a supplier, a delivery or order slip signed by the owner, contractor, or subcontractor having a direct contractual relation with a contractor, or an authorized agent of any of them), dated, between (claimant) and (name of other contracting party) of (address).

5. The date of the provision of the last work, services, material or equipment for which payment is claimed is (date).

NOTICE TO OWNER OF REAL PROPERTY

Your real estate may be subject to sale to satisfy the amount asserted by this claim. However, your real estate cannot be sold until the facts and issues which form the basis of this claim are decided in a legal proceeding before a court of law. The lien claimant is required by law to commence suit to enforce this claim.

The claimant filing this lien claim shall forfeit all rights to enforce the lien and shall be required to discharge the lien of record, if the claimant fails to bring an action in the Superior Court, in the county in which the real property is situated, to establish the lien claim:

1. Within one year of the date of the last provision of work, services, material or equipment, payment for which the lien claim was filed; or

2. Within 30 days following receipt of written notice, by personal service or certified mail, return receipt requested, from the owner requiring the claimant to commence an action to establish the lien claim.

You will be given proper notice of the proceeding and an opportunity to challenge this claim and set forth your position. If, after you (and/or your contractor or subcontractor) have had the opportunity to challenge this lien claim, the court of law enters a judgment against you and in favor of the claimant filing this lien claim, and thereafter you fail to pay that judgment, your real estate may then be sold to satisfy the judgment.

You may choose to avoid subjecting your real estate to sale by doing either of the following:

1. You (or your contractor or subcontractor) can pay the claimant and obtain a discharge of lien claim from the claimant; or

2. You (or your contractor or subcontractor) can cause the lien claim to be discharged by filing a surety bond or making a deposit of funds as provided for in section 31 of P.L.1993, c.318 (C.2A:44A-31).

If you (or your contractor or subcontractor) choose to pay the claimant under 1. above, you will lose your right to challenge this lien claim in a legal proceeding before a court of law.

If you (or your contractor or subcontractor) choose to discharge the lien claim by filing a surety bond or making a deposit of funds as provided in section 31 of P.L.1993, c.318 (C.2A:44A-31), you will retain your right to challenge this lien claim in a legal proceeding before a court of law.

NOTICE TO SUBCONTRACTOR OR CONTRACTOR:

This lien has been filed with the county clerk and served upon the owner of the real estate. This lien places the owner on notice that the real estate may be sold to satisfy this claim unless the owner pays the claimed sum to this claimant.

Signed.....

For
Individual, Firm or Corporation

Date:

CLAIMANT'S REPRESENTATION AND VERIFICATION

Claimant represents and verifies that:

1. The amount claimed herein is due and owing at the date of filing, pursuant to claimant's contract described in the construction lien claim.
2. The work, services, material or equipment for which this lien claim is filed was provided exclusively in connection with the improvement of the real property which is the subject of this claim.
3. This claim has been filed within 90 days from the last date upon which the work, services, materials or equipment for which payment is claimed was provided.
4. The foregoing statements made by me are true, to the best of my knowledge. I am aware that if any of the foregoing statements made by me are false, this construction lien claim will be void and that I will be liable for damages to the owner or any other person injured as a consequence of the filing of this lien claim.

Name of Claimant.....

Signed.....
(Type or Print Name and Title)

Date:.....

C.2A:44A-9 Amount of lien claim.

9. The amount of a lien claim shall be limited to the contract price, or any unpaid portion thereof, whichever is less, of the claimant's contract for the work, services, material or equipment provided.

C.2A:44A-10 Attachment of lien claim to interest of owner; amount of liability.

10. Subject to the limitations of section 6 of this act, the lien claim shall attach to the interest of the owner from and after the time of filing of the lien claim. Except as provided by section 20 of this act, no lien claim shall attach to the estate or interest acquired by a bona fide purchaser first recorded or lodged for record; nor shall a lien claim enjoy priority over any mortgage, judgment or other lien first recorded, lodged for record, filed or docketed. A lien claim filed under the provisions of this act shall be subject to the effect of a notice of settlement filed pursuant to P.L.1979, c.406 (C.46:16A-1 et seq.). Except as set forth in sections 15 and 21 of this act, the maximum amount for which an owner will be liable or an interest in real property subject to a lien under this act for one or more lien claims filed pursuant to this act shall not be greater than:

a. In the case of a lien claim filed by a contractor, the total amount of the contract price of the contract between the owner and the contractor less the amount of payments made, if any, prior to receipt of a copy of the lien claim pursuant to section 7 of this act, by the owner to the contractor or any other claimant who has filed a lien claim or a Notice of Unpaid Balance and Right to File Lien pursuant either to a contract with the contractor and any subcontractor or supplier, or a contract between a subcontractor of the contractor and any supplier or other subcontractor; or

b. In the case of a lien claim filed by a subcontractor or supplier, the amount provided in subsection a. of this section, or the contract price of the contract between the contractor or subcontractor and the subcontractor or supplier, as applicable, pursuant to which the work, services, materials or equipment is provided by the subcontractor or supplier, less the amount of payments made, if any, prior to receipt of a copy of the lien claim pursuant to section 7 of this act, to the contractor or supplier or any other claimant who has filed a lien claim or a Notice of Unpaid Balance and Right to File Lien pursuant to a contract with such subcontractor or supplier, whichever is less.

C.2A:44A-11 Amendment of lien claim, form.

11. A lien claim may be amended by the filing of an amendment with the county clerk. The amended lien claim shall comply

with all the conditions and requirements for the filing of a lien claim, including the notice requirements of section 7 of this act, as well as the conditions and requirements of this section and subject to the limitations of section 10 of this act. That portion of the amended lien claim in excess of the amount previously claimed shall attach as of the date of filing of the amended lien claim.

The amended lien claim shall be filed in substantially the following form:

**AMENDMENT TO CONSTRUCTION LIEN CLAIM
TO THE CLERK, COUNTY OF**

On (date), the undersigned claimant, (name of claimant) of (address of claimant), filed a CONSTRUCTION LIEN CLAIM in the amount of (\$) DOLLARS for the value of the work, services, material or equipment provided in accordance with the contract between claimant and (name) as of (date).

This construction lien claim was claimed against the interest of (name) as (check one):

_____ Owner

_____ Lessee

_____ Other (describe) in that certain tract or parcel of land and premises described as Block, Lot, on the tax map of the of, County of, State of New Jersey, for the improvement of which property the aforementioned work, services, materials or equipment was provided.

This amends a lien claim which was previously filed with the County Clerk of County on, 19..... as No. in Book No., Page A Notice of Unpaid Balance and Right to File Lien (if any) was previously filed with the County Clerk of on, 19..... as No. in Book No., Page

Amendments to the original claim were recorded in the office of the County Clerk on, 19..... as No. in Book No., Page (Complete if applicable)

Effective the date of the filing of this AMENDMENT TO CONSTRUCTION LIEN CLAIM, the value of the lien is claimed to be in the total amount of (\$) DOLLARS, inclusive of all prior lien claims or amendments thereof.

The work, services, material or equipment provided upon which this Amendment is made are:

- a.
- b.
- c. (etc.)

The date of the provision of the last work, services, material or equipment for which payment is claimed is (date).

NOTICE TO OWNER OF REAL PROPERTY

(Same as for lien claim)

NOTICE TO SUBCONTRACTOR OR CONTRACTOR

(Same as for lien claim)

CLAIMANT'S REPRESENTATION AND VERIFICATION

(Same as for lien claim)

C.2A:44A-12 Authorized withholding, deductions.

12. Upon receipt of notice of a lien claim, the owner shall be authorized to withhold and deduct the amount claimed from the unpaid part of the contract price that is or thereafter may be due and payable to the contractor or subcontractor, or both. The owner may pay the amount of the lien claim to the claimant unless the contractor or subcontractor against whose account the lien is filed notifies the owner and the lien claimant in writing within 20 days of service of the lien claim upon both the owner and the contractor or subcontractor, that the claimant is not owed the monies claimed and the reasons therefor. Any such payment made by the owner shall constitute a payment made on account of the contract price of the contract with the contractor or subcontractor, or both, against whose account the lien is filed.

C.2A:44A-13 "Construction Lien Book," "Construction Lien Index Book;" fees.

13. a. Each county clerk shall provide a book designated as the "Construction Lien Book" in which each clerk shall enter each Notice of Unpaid Balance and Right to File Lien and Amended Notice of Unpaid Balance and Right to File Lien, and each lien claim and amended lien claim, and each discharge, subordination or release of a lien claim or Notice of Unpaid Balance and Right to File Lien presented for filing pursuant to the provisions of this act.

b. The county clerk shall cause marginal notations to be made upon each document filed pursuant to this act, as follows: upon each Notice of Unpaid Balance and Right to File Lien whenever an Amended Notice of Unpaid Balance and Right to File Lien or a discharge relative thereto is filed; upon each lien claim whenever an amended lien claim relative thereto is filed; upon each Notice of Unpaid Balance and Right to File Lien whenever a lien claim

or amended lien claim relative thereto is filed; upon each lien claim or amended lien claim whenever a discharge, subordination or release of a lien claim relative thereto is filed. In addition, the clerk shall cause a notation of the date of commencement of an action to enforce a lien claim to be made upon the lien claim or amended lien claim relative thereto. The failure of the clerk to cause a marginal notation to be made shall not affect the validity or enforceability of any document filed pursuant to this act.

c. The county clerk shall provide and maintain on a daily basis an index book designated as the "Construction Lien Index Book," setting forth therein in alphabetical order, arranged by the names of the owners, and by the names of the claimants, each Notice of Unpaid Balance and Right to File Lien, Amended Notice of Unpaid Balance and Right to File Lien, lien claim, amended lien claim, discharge, subordination and release of a lien claim or Notice of Unpaid Balance and Right to File Lien.

d. Each county clerk shall charge the following fees for the filing and marginal notation of the documents authorized to be filed by this act:

Each Notice of Unpaid Balance and Right to File	
Lien or Amended Notice of Unpaid Balance	
and Right to File Lien.....	\$4.50
Each lien claim or amended lien claim.....	\$4.50
Each discharge, subordination or release of	
lien claim or release of Notice of Unpaid	
Balance and Right to File Lien	\$2.00
Each marginal notation.....	\$1.00

C.2A:44A-14 Claimant's failure to bring action; forfeiture, liability.

14. a. A claimant filing a lien claim shall forfeit all rights to enforce the lien, and shall immediately discharge the lien of record, if the claimant fails to bring an action in the Superior Court, in the county in which the real property is situated, to establish the lien claim:

(1) Within one year of the date of the last provision of work, services, material or equipment, payment for which the lien claim was filed; or

(2) Within 30 days following receipt of written notice, by personal service or certified mail, return receipt requested, from the owner requiring the claimant to commence an action to establish the lien claim.

b. Any lien claimant who forfeits a lien pursuant to subsection a. of this section and fails to discharge that lien of record in accordance with section 30 of this act, shall be liable for all court

costs, and reasonable legal expenses, including attorneys' fees, incurred by the owner, the contractor, or subcontractor, or any combination, in defending or causing the discharge of the lien claim. The court may, in addition, enter judgment against the claimant for damages to any of the parties adversely affected by the lien claim.

c. Whenever any claimant shall commence an action in the Superior Court of New Jersey to enforce a lien claim as provided by this act, the claimant shall cause a Notice of Lis Pendens to be filed in the office of the county clerk or register pursuant to the provisions of N.J.S.2A:15-6 et seq.

d. Any disputes arising out of the improvement which is the subject of a lien claim but which are unrelated to any action to enforce a lien claim may be brought in a separate action.

C.2A:44A-15 Improper filing of lien claim; forfeiture of rights; liability.

15. a. If a lien claim is without basis, the amount of the lien claim is willfully overstated, or the lien claim is not filed in substantially the form or in the manner or at a time not in accordance with the provisions of this act, the claimant shall forfeit all claimed lien rights and rights to file subsequent lien claims to the extent of the face amount claimed in the lien claim. The claimant shall also be liable for all court costs, and reasonable legal expenses, including attorneys' fees, incurred by the owner, contractor or subcontractor, or any combination of owner, contractor and subcontractor, in defending or causing the discharge of the lien claim. The court shall, in addition, enter judgment against the claimant for damages to any of the parties adversely affected by the lien claim.

b. If a defense to a lien claim is without basis, the party maintaining the defense shall be liable for all court costs, and reasonable legal expenses, including attorneys' fees, incurred by any of the parties adversely affected by the defense to the lien claim. The court shall, in addition, enter judgment against the party maintaining the frivolous defense for damages to any of the parties adversely affected by said defense.

c. If a lien claim is forfeited pursuant to this section, or section 14 of this act, nothing herein shall be construed to bar the filing of a subsequent lien claim, provided, however, any subsequent lien claim shall not include a claim for the work, services, equipment or material claimed within the forfeited lien claim.

C.2A:44A-16 Party defendants joined by claimant, entitlement to defense.

16. a. A claimant shall join as party defendants the contractor or subcontractor who is alleged to have failed to make the pay-

ments for which the lien claim has been filed and any other person having an interest in the real property that would be adversely affected by the judgment. A party required to be joined under this subsection shall be joined if feasible pursuant to R.4:28-1(a) of the Rules Governing the Courts of the State of New Jersey, unless prohibited by law.

b. Any party to an action to establish a lien shall be entitled to any defense available to any other party in contesting the amount for which a claimant seeks to have his lien reduced to judgment.

C.2A:44A-17 Lien claims unabated by death of party in interest.

17. No lien claim under this act or right thereto shall abate by reason of the death of any party in interest and the right to the lien claim may be asserted by the personal representative of a deceased contractor, subcontractor, or supplier against the personal representative of a deceased owner, contractor or subcontractor.

C.2A:44A-18 Calculation of proportionate share under residential construction.

18. This section shall solely apply to work, services, material or equipment furnished under a residential construction contract. If a lien attaches to an interest in real property, the lien claimant shall release a proportionate share of the interest in real property from the lien upon receipt of payment for that proportionate share. This proportionate share shall be calculated in the following manner:

a. If there is a contract between the lien claimant and the owner which provides for an allocation by lot or tract, that allocation of the proportionate share shall be binding upon the lien claimant.

b. If the work performed by the lien claimant was for a condominium in which a master deed is filed before the lien attaches, or for work performed for a cooperative in which a master declaration is filed before the lien attaches, then the proportionate share shall be allocated in an amount equal to the percentage of common elements attributable to each unit.

c. If subsection a. or b. of this section does not apply, then the lien shall not be released as to any portion of the interest in real property unless the lien claimant and the owner otherwise agree in a writing signed by both parties.

d. If a lien claimant receives payment of its proportionate share but refuses to discharge its lien claim, then upon application to a court having jurisdiction thereof, the court shall order the discharge of the lien claim to the extent of that proportionate share. The lien claimant shall be further subject to the provisions

of section 30 of this act, and any amounts to be paid shall be paid from the amount due the claimant.

C.2A:44A-19 Attachment of lien in condominium or cooperative unit.

19. a. For work performed solely within a unit in a condominium or cooperative, the lien shall only attach to the interest of the owner in the condominium or cooperative unit.

b. If an interest in real property is conveyed after work is performed but before a lien attaches to that property, then the lien shall attach to the real property retained by the owner, but shall not attach to the real property or interest therein previously conveyed.

C.2A:44A-20 Notice of Unpaid Balance and Right to File Lien, form.

20. All valid liens filed pursuant to this act shall attach to the interest of the owner from the time of filing of the lien claim in the office of the county clerk, subject to the provisions of section 10 of this act.

a. In the event of the creation, conveyance, lease or mortgage of an estate or interest in real property to which improvements have been made that are subject to the lien provisions of this act, a lien claim validly filed under this act shall have priority over any prior creation, conveyance, lease or mortgage of an estate or interest in real property, only if the claimant has filed with the county clerk prior to that creation, conveyance, lease or mortgage, a Notice of Unpaid Balance and Right to File Lien in substantially the following form:

TO THE CLERK, COUNTY OF :

In accordance with the terms and provisions of the "Construction Lien Law," P.L.1993, c.318 (C.2A:44A-1 et al.), notice is hereby given that:

1. (Name of claimant) of (address of claimant) has on (date) a potential construction lien against the below described property of (owner against whose property the lien will be claimed), in the amount of (\$), for the value of the work, services, material or equipment provided in accordance with a contract with (name of contracting party with whom claimant has a contract) for the following work, services, materials or equipment:

- a.
- b.
- c. (etc.)

2. The amount due for work, services, materials or equipment provided by claimant in connection with the improvement of the real property, and upon which this lien claim is based is as follows:

Total contract amount: \$.....

Amendments to contract: \$.....

Total contract amount and
 amendments to contract: \$.....
 Less: Agreed upon credits: \$.....
 Contract amount paid
 to date: \$.....
 Amendments to contract
 amount paid to date: \$.....
 TOTAL REDUCTIONS
 FROM CONTRACT
 AMOUNT AND AMEND-
 MENTS TO CONTRACT: \$.....

TOTAL LIEN
 CLAIM AMOUNT: \$.....

3. This construction lien is to be claimed against the interest of
 (name) as (check one):

_____ Owner
 _____ Lessee
 _____ Other (describe): in that cer-
 tain tract or parcel of land and premises described as Block
, Lot, on the tax map of the
 of, County of, State
 of New Jersey, for the improvement of which property the aforemen-
 tioned work, services, materials or equipment was provided.

4. The work, services, materials or equipment was provided pur-
 suant to the terms of a written contract (or, in the case of a supplier,
 a delivery or order slip signed by the owner, contractor, or subcon-
 tractor having a direct contractual relation with a contractor, or an
 authorized agent of any of them), dated.....,
 between (claimant) and (name of other
 contracting party) of (address).

5. The date of the provision of the last work, services, mate-
 rial or equipment for which payment is claimed is (date).

6. The written contract (is) (is not) (cross out inapplicable portion)
 a residential construction contract as defined in section 2 of this act.

7. This notification has been filed prior or subsequent to com-
 pletion of the work, services, materials or equipment as described
 above. The purpose of this notification is to advise the owner and
 any other person who is attempting to encumber or take transfer
 of said property described above that a potential construction lien
 may be filed within the 90 day period following the date of the

provision of the last work, services, materials or equipment as set forth in paragraph 5.

.....
 Claimant

CLAIMANT'S REPRESENTATION AND VERIFICATION

Claimant represents and verifies that:

1. The amount claimed herein is due and owing at the date of filing, pursuant to claimant's contract described in the Notice of Unpaid Balance and Right to File Lien.
2. The work, services, material or equipment for which this Notice of Unpaid Balance and Right to File Lien is filed was provided exclusively in connection with the improvement of the real property which is the subject of this Notice of Unpaid Balance and Right to File Lien.
3. The Notice of Unpaid Balance and Right to File Lien has been filed within 90 days from the last date upon which the work, services, materials or equipment for which payment is claimed was provided.
4. The foregoing statements made by me are true, to the best of my knowledge.

Name of Claimant

Signed

(Type or Print Name and Title)

Date:

b. In the event that the claimant elects to file a Notice of Unpaid Balance and Right to File Lien as described above, it shall not be necessary to serve a copy of said Notice of Unpaid Balance and Right to File Lien upon any interested party.

c. After the filing of a Notice of Unpaid Balance and Right to File Lien, any person claiming title to or an estate or interest in or a lien upon the real property described in the Notice of Unpaid Balance and Right to File Lien, shall be deemed to have acquired said title, estate, interest or lien with knowledge of the anticipated filing of a lien claim, and shall be subject to the terms, conditions and provisions of that lien claim within the period provided by section 6 of this act and as set forth in the Notice of Unpaid Balance and Right to File Lien. A Notice of Unpaid Balance and Right to File Lien filed under the provisions of this act shall be subject to the effect of a notice of settlement filed pursuant to P.L.1979, c.406 (C.46:16A-1 et seq.).

d. The Notice of Unpaid Balance and Right to File Lien shall be effective for 90 days from the date of the provision of the last work, services, materials or equipment delivery for which payment is claimed as set forth in paragraph 5 of the Notice of Unpaid Balance and Right to File Lien.

e. The filing of a Notice of Unpaid Balance and Right to File Lien shall not constitute the filing of a lien claim in accordance with the provisions of this act, nor does it extend the time for the filing of a lien claim in accordance with the provisions of this act.

f. Failure to file a Notice of Unpaid Balance and Right to File Lien shall not affect the claimant's lien rights arising under the provisions of this act, to the extent that no creation, conveyance, lease or mortgage of an interest in real property has taken place prior to the filing of a Notice of Unpaid Balance and Right to File Lien or lien claim.

g. A Notice of Unpaid Balance and Right to File Lien may be amended by the filing of an Amended Notice of Unpaid Balance and Right to File Lien in accordance with the provisions of this section.

C.2A:44A-21 Legislative findings, additional requirements for filing of lien on residential construction.

21. a. The Legislature finds that the ability to sell and purchase residential housing is essential for the preservation and enhancement of the economy of the State of New Jersey and that while there exists a need to provide contractors, subcontractors and suppliers with statutory benefits to enhance the collection of money for goods, services and materials provided for the construction of residential housing in the State of New Jersey, the ability to have a stable marketplace in which families can acquire homes without undue delay and uncertainty and the corresponding need of lending institutions in the State of New Jersey to conduct their business in a stable environment and to lend money for the purchase or finance of home construction or renovations requires that certain statutory provisions as related to the lien benefits accorded to contractors, subcontractors and suppliers be modified. The Legislature further finds that the construction of residential housing generally involves numerous subcontractors and suppliers to complete one unit of housing and that the multiplicity of lien claims and potential for minor monetary disputes poses a serious impediment to the ability to transfer title to residential real estate expeditiously. The Legislature further finds that the purchase of a home is generally one of the largest expenditures that a family or person will make and that there are a multitude of

other State and federal statutes and regulations, including the "New Home Warranty and Builders' Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.) and "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), which afford protection to consumers in the purchase and finance of their homes, thereby necessitating a different treatment of residential real estate as it relates to the rights of contractors, suppliers and subcontractors to place liens on residential real estate. The Legislature declares that separate provisions concerning residential construction will provide a system for balancing the competing interests of protecting consumers in the purchase of homes and the contract rights of contractors, suppliers and subcontractors to obtain payment for goods and services provided.

b. The filing of a lien for work, services, material or equipment furnished pursuant to a residential construction contract shall be subject to the following additional requirements:

(1) As a condition precedent to the filing of any lien arising under a residential construction contract, a lien claimant shall first file a Notice of Unpaid Balance and Right to File Lien in accordance with the provisions of subsection a. of section 20 of this act, and comply with all other provisions of this section.

(2) Upon the filing of a Notice of Unpaid Balance and Right to File Lien, service of the Notice of Unpaid Balance and Right to File Lien shall be effected in accordance with the provisions of section 7 of this act.

(3) Unless the parties have otherwise agreed in writing to an alternative dispute resolution mechanism, simultaneously with the service under paragraph (2) of this subsection, the lien claimant shall also serve a demand for arbitration and fulfill all the requirements and procedures of the American Arbitration Association to institute an expedited proceeding before a single arbitrator designated by the American Arbitration Association.

(4) Upon the closing of all hearings in the arbitration, the arbitrator shall make the following determinations: (a) whether the Notice of Unpaid Balance and Right to File Lien was in compliance with section 20 of this act and whether service was proper under section 7 of this act; (b) the validity and amount of any lien claim which may be filed pursuant to the Notice of Unpaid Balance and Right to File Lien; (c) the validity and amount of any liquidated or unliquidated setoffs or counterclaims to any lien claim which may be filed; and (d) the allocation of costs of the arbitration among the parties.

(5) In the event the amount of any setoffs or counterclaims presented in the arbitration are unliquidated and cannot be determined by the arbitrator in a liquidated amount, the arbitrator, as a condition precedent to the filing of the lien claim, shall order the lien claimant to post a bond, letter of credit or funds with an attorney-at-law of New Jersey, or other such person or entity as may be ordered by the arbitrator in such amount as the arbitrator shall determine to be 110% of the approximate fair and reasonable value of such setoffs or counterclaims, but in no event shall the bond, letter of credit or funds exceed the amount of the lien claim which may be filed. This 110% limitation regarding any bond, letter of credit or funds shall also apply to any alternative dispute resolution mechanism to which the parties may agree.

(6) The arbitrator shall make such determinations set forth in paragraphs (4) and (5) of this subsection within 30 days of receipt of the lien claimant's demand for arbitration by the American Arbitration Association. That time period shall not be extended unless otherwise agreed to by the parties. If an alternative dispute mechanism is alternatively agreed to between the parties, such determination shall be made as promptly as possible making due allowance for all time limits and procedures set forth in this act.

(7) Any contractor, subcontractor or supplier whose interests are affected by the filing of a Notice of Unpaid Balance and Right to File Lien under section 10 of this act shall be permitted to join in such arbitration; but the arbitrator shall not determine the rights or obligations of any such parties except to the extent those rights or obligations are affected by the lien claimant's Notice of Unpaid Balance and Right to File Lien.

(8) Upon determination by the arbitrator that there is an amount which, pursuant to a valid lien shall attach to the improvement, the lien claimant shall, within 10 days of the lien claimant's receipt of the determination, file such lien claim in accordance with the provisions of section 8 of this act and furnish any bond, letter of credit or funds required by the arbitrator's decision. The failure to file such a lien claim, or furnish the bond, letter of credit or funds, within the 10-day period, shall cause any lien claim to be invalid.

(9) Except for the arbitrator's determination itself, any such determination shall not be considered final in any legal action or proceeding, and shall not be used for purposes of collateral estoppel, res judicata, or law of the case to the extent applicable. Any finding of the arbitrator pursuant to the provisions of this act shall not be admissible for any purpose in any other action or proceeding.

(10) If either the lien claimant or the owner is aggrieved by the arbitrator's determination, then either party may institute a summary action in the Superior Court, Law Division, for the vacation, modification or correction of the arbitrator's determination. The arbitrator's determination shall be confirmed unless it is vacated, modified or corrected by the court. The court shall render its decision after giving due regard to the time limits and procedures set forth in this act.

(11) In the event a Notice of Unpaid Balance and Right to File Lien is filed and the owner conveys its interest in real property to another person before a lien claim is filed, then prior to or at the time of conveyance, the owner may make a deposit with the county clerk where the improvement is located, in an amount no less than the amount set forth in the Notice of Unpaid Balance and Right to File Lien. For any deposit made with the county clerk, the county clerk shall discharge the Notice of Unpaid Balance and Right to File Lien or any related lien claim against the real property for which the deposit has been made. After the issuance of the arbitrator's determination set forth in paragraphs (4) and (5) of this subsection, any amount in excess of that determined by the arbitrator to be the amount of a valid lien claim shall be returned forthwith to the owner who has made the deposit. The balance shall remain where deposited unless the lien claim has been otherwise paid, satisfied by the parties, forfeited by the claimant, invalidated pursuant to paragraph (8) of this subsection or discharged under section 33 of this act. Notice shall be given by the owner in writing to the lien claimant within five days of making the deposit.

(12) Solely for those lien claims arising from a residential construction contract, if a Notice of Unpaid Balance and Right to File Lien is determined to be without basis, the amount of the Notice of Unpaid Balance and Right to File Lien is significantly overstated, or the Notice of Unpaid Balance and Right to File Lien is not filed in substantially the form, or in the manner, or at a time not in accordance with the provisions of this act, then the claimant shall be liable for all damages suffered by the owner or any other party adversely affected by the Notice of Unpaid Balance and Right to File Lien, including all court costs, reasonable attorneys' fees and legal expenses incurred.

(13) If the aggregate sum of all lien claims attaching to any real property that is the subject of a residential construction contract exceeds the amount due under a residential purchase agreement, less the amount due under any previously recorded mortgages or liens other than construction liens, then upon entry of judgment

of all such lien claims, each lien claim shall be reduced pro rata. Each lien claimant's share then due shall be equal to the monetary amount of the lien claim multiplied by a fraction in which the denominator is the total monetary amount of all valid claims on the owner's interest in real property against which judgment has been entered, and the numerator is the amount of each particular lien claim for which judgment has been entered. The amount due under the residential purchase agreement shall be the net proceeds of the amount paid less previously recorded mortgages and liens other than construction liens and any required recording fees.

C.2A:44A-22 Priority of mortgages over liens, conditions.

22. Nothing in this act shall be deemed to supersede the mortgage priority provisions of P.L.1985, c.353 (C.46:9-8.1 et seq.). Every mortgage shall have priority as to the land or other interest in real property described and any improvement wholly or partially erected or thereafter to be erected, constructed or completed thereon, over any lien which may be established by virtue of this act to the extent that the mortgage secures funds which have been applied to:

- a. The payments of amounts due to any claimants who have filed a lien claim or a Notice of Unpaid Balance and Right to File Lien;
- b. The payment or the securing of payment of all or part of the purchase price of the land covered thereby;
- c. The payment of any valid lien or encumbrance which is, or can be established as, prior to a lien provided for by this act;
- d. The payment of any tax, assessment or other State or municipal lien or charge due or payable at the time of such payment;
- e. The payment of any premium, counsel fee, consultant fee, interest or financing charges, or other cost related to the financing, any of which are required by the lender to be paid by the owner, provided that the total of same shall not be in excess of 10 percent of the principal amount of the mortgage securing the loan upon which they are based;
- f. Payment to the owner of that portion of the purchase price of the real property on which the improvements are made or to be made which have previously been paid by the owner, exclusive of any interest or any other carrying costs of such real property, provided, however, that at the time of the payment of such funds to the owner, the budget upon which the loan was made indicated that the amount of the loan is not less than the total of: (1) the purchase price of the real property, (2) the cost of constructing

the improvements, and (3) any cost listed in subsections c., d. and e. of this section; or

g. An escrow in an amount not to exceed 150% of the amount necessary to secure payment of charges described in subsections a., c., d. and e. of this section.

C.2A:44A-23 Concurrent lien claims; pro rata payment.

23. All lien claims established by judgment shall be concurrent and shall be paid pro rata out of the lien fund and the proceeds of the sale authorized by this act.

C.2A:44A-24 Statement filed when judgment obtained.

24. When judgment is obtained under this act there shall be filed in the office of the county clerk a statement signed and sealed by the clerk of the court, containing:

- a. The name of the court;
- b. The names of the parties;
- c. Whether judgment is against the owner, contractor or subcontractor, or against the building and land only, or both; and
- d. The amount and date of judgment.

There shall be filed with, or as part of, the statement, an oath of the claimant, his attorney or agent, stating the amount currently due thereon based on an updated statement of the amount owing on the judgment.

C.2A:44A-25 Issuance of writs of execution.

25. If judgment in an action to enforce a lien claim under this act is against the owner, contractor or subcontractor, a writ of execution may issue thereon, as in other cases; if against the improvements and land, a special writ of execution may issue to make the amount recovered therein by sale of the improvements and land.

If both general and special judgments are given, both writs of execution may issue, separately or combined in one writ, and one of such writs may issue after the return of the other for the whole amount recovered or the residue as the case may require.

C.2A:44A-26 Advertisement, sale, conveyance.

26. When a special writ of execution has issued under this act, the sheriff or other officer shall advertise, sell and convey the improvement and land in the same manner as in the case of other execution sales.

C.2A:44A-27 Interest in residential property, priority to all subsequent liens.

27. The interests in real property set forth in section 21 of this act shall have priority to all subsequent liens under this act upon the land and upon the improvements thereon, except such as may be removable as between landlord and tenant, which may be sold

and removed by virtue of any lien for the erection, construction or completion of the same, free from the prior encumbrances.

C.2A:44A-28 Payment, distribution of proceeds.

28. The sheriff or other officer conducting the sale authorized by this act shall pay the proceeds thereof to the clerk of the Superior Court, who shall distribute the proceeds among the lien claims filed under this act before an application for distribution thereof is made to the court. The Superior Court shall provide proper disposition of proceeds of any sale to the persons entitled thereto under this act. The amount due a lien claimant shall not be paid over to him until after his lien claim has been established by judgment.

C.2A:44A-29 Distribution of surplus proceeds.

29. If the proceeds of the sale of the improvements or land under any judgment obtained under this act shall be more than sufficient to pay the judgments of the claimants entitled to payment out of the proceeds of the sale under this act, any surplus shall be distributed by the court out of which the special writ of execution issued, to the defendants holding liens, subject to that of claimants, according to priority of their respective liens as determined in the judgment.

C.2A:44A-30 Filing of certificate to discharge lien claim of record.

30. a. When a lien claim has been filed and the claim has been paid, satisfied or settled by the parties or forfeited by the claimant, the claimant or his successor in interest or his attorney shall, within 30 days, file with the county clerk a certificate, duly acknowledged or proved, directing the county clerk to discharge the lien claim of record, which certificate shall contain:

- (1) The date of filing the lien claim;
- (2) The book and page number endorsed thereon;
- (3) The name of the owner of the land named in the notice;
- (4) The location of the property; and
- (5) The name of the person for whom the work, services, equipment or materials was provided.

b. If the claimant shall fail or refuse to file this certificate, then upon application by any party in interest, upon notice to the claimant, to be served upon him in the same manner as provided by section 7 of this act, or upon satisfactory proof that the claimant cannot be served, any judge of the Superior Court may, upon good cause being shown, order the lien claim discharged. The county clerk shall thereupon attach the certificate or order to the original notice of lien claim on file and shall note on the record

thereof "discharged by certificate" or "discharged by court order," as the case may be.

c. Any lien claimant who fails to discharge a lien claim of record pursuant to this section shall be liable for all court costs, and reasonable legal expenses, including attorneys' fees, incurred by the owner, the contractor, or subcontractor, or any combination of owner, contractor and subcontractor, as applicable, to discharge or obtain the discharge of the lien, and in addition thereto, the court may enter judgment against the claimant for damages to any or all of the parties adversely affected by the failure to discharge the lien.

C.2A:44A-31 Filing of surety bond, deposit.

31. When a lien claim is filed against any improvement and land under this act, the owner, contractor or subcontractor may execute and file with the proper county clerk a bond in favor of the lien claimant, with a surety company, duly authorized to transact business in this State, as surety thereon, in an amount equal to 110% of the amount claimed by the lien claimant and a payment in the amount of \$25, conditioned upon the payment of any judgment and costs that may be recovered by the lien claimant under this claim. As an alternative, the owner, contractor or subcontractor may deposit with the clerk of the Superior Court of New Jersey, funds constituting an amount equal to 110% of the amount claimed by the lien claimant and a payment in the amount of \$25, conditioned upon the payment of any judgment and costs that may be recovered by the lien claimant under this claim.

Any surety bond filed with the county clerk under this section shall be discharged, and any deposit with the clerk of the Superior Court shall be returned to the depositor, without court order, upon presentment by the owner, contractor or subcontractor of any of the following:

- (a) a duly acknowledged certificate as provided in paragraph (2) of subsection a. of section 33 of this act;
- (b) an order of discharge as provided in paragraph (3) of subsection a. of section 33 of this act;
- (c) a judgment of dismissal or other final judgment against the lien claimant; or
- (d) a true copy of a Stipulation of Dismissal, with prejudice, executed by the lien claimant or its representative in any action to foreclose the lien claim which is subject to the surety bond or deposit.

C.2A:44A-32 Release, discharge from claim.

32. When the bond, deposit or any combination thereof, authorized by section 31 of this act, is properly filed or deposited, the improvements and land described in the lien claim shall thereupon

be released and discharged from the claim and no execution shall issue against the improvements and land. The words "released by bond" or "released by deposit of funds," as applicable, and a reference to the time and place of filing of the bond or deposit shall be entered by the county clerk upon the record of the lien claim.

C.2A:44A-33 Discharge of record of lien claim.

33. a. A lien claim may be discharged of record by the county clerk:

(1) Upon the execution and filing with the county clerk of a surety bond, or the deposit of funds with the clerk of the Superior Court of New Jersey, in favor of the claimant in an amount equal to 110% of the amount of the lien claim; or

(2) Upon receipt of a duly acknowledged certificate, discharging the lien claim from the claimant having filed the lien claim, or his successor in interest, or his attorney; or

(3) Pursuant to an order of discharge by the court.

b. When judgment of dismissal or final other judgment against the lien claimant is entered in an action to enforce the lien claim under this act and no appeal is taken within the time allowed for an appeal, or if an appeal is taken within the time allowed for an appeal, or if an appeal is taken and finally determined against the lien claimant, the court before which the judgment was rendered, upon application and written notice to the lien claimant as the court shall direct, shall order the county clerk to enter a discharge of the lien claim.

c. If an appeal is taken by the claimant, the claim shall be discharged unless the claimant posts a bond, in an amount to be determined by the court, to protect the owner from the reasonable costs, expenses and damages which may be incurred by virtue of the continuance of the lien claim encumbrance.

C.2A:44A-34 Book, page number of original record of lien claim necessary for release, discharge.

34. A discharge, subordination or release of a lien claim or Notice of Unpaid Balance and Right to File Lien, a receipt of payment of a lien claim, or any order of the court discharging or releasing a lien claim, shall recite the book and page number of the original record of the lien claim, and a full description of the property discharged or released. The county clerk may refuse to discharge, release or satisfy a lien claim or file a receipt of payment of a lien claim unless the provisions of this section have been satisfied.

C.2A:44A-35 Filing, recording of discharge.

35. A discharge, subordination or release of a lien claim or Notice of Unpaid Balance and Right to File Lien shall be duly

acknowledged or proved, and recorded in a properly indexed book for that purpose. A notation of the record of the discharge of a lien claim or Notice of Unpaid Balance and Right to File Lien shall be endorsed upon the margin of the record in the book where the original lien or Notice of Unpaid Balance and Right to File Lien is recorded stating that the discharge is filed and recorded, giving the date of filing and recording and setting forth the book and the page number where the discharge, or receipt of payment of the lien or order discharging the lien, is recorded.

C.2A:44A-36 Liability for fraud.

36. A person who fraudulently deprives a person entitled to the benefits of this act shall be liable to that person for any damages resulting therefrom.

C.2A:44A-37 Furnishing of list of subcontractors, suppliers.

37. a. If required in a contract or upon written request from an owner to a contractor, a subcontractor, or both, the contractor or subcontractor shall, within 10 days, provide the owner with an accurate and full list of the names and addresses of each subcontractor and supplier who may have a right to file a lien pursuant to the provisions of this act.

b. If required in a contract or upon written request from a contractor to a subcontractor, the subcontractor shall, within 10 days, provide the contractor with an accurate and full list of the names and addresses of each subcontractor or supplier who may have a right to file a lien pursuant to the provisions of this act.

c. Any list provided pursuant to the provisions of subsection a. or b. of this section shall be verified under oath by the person providing same.

d. Reliance upon the verified list by the person requesting same or by the owner shall be prima facie evidence establishing the bona fides of payment made in reliance thereon and shall constitute an absolute defense to any claim that the party making such payment should have made additional inquiry to determine the identity of potential claimants.

e. Any person to whom a written request has been made pursuant to the provisions of subsection a. or b. of this section who does not provide a list in compliance with this section shall be directly liable in damages to the party requesting the list or to the owner, including, but not limited to, court costs and the reasonable legal expenses, including attorneys' fees, incurred by said party or the owner, or both, in defending or causing the discharge of a lien claim asserted by a party whose name has been omitted from the list.

C.2A:44A-38 Waivers of construction lien rights.

38. Waivers of construction lien rights are against public policy, unlawful, and void, unless given in consideration for payment for the work, services, materials or equipment provided or to be provided, and such waivers shall be effective only upon and to the extent that such payment is actually received.

39. N.J.S.2A:15-6 is amended to read as follows:

Written notice of pendency of action; contents.

2A:15-6. In every action, instituted in any court of this State having civil jurisdiction or in the United States District Court for the District of New Jersey, the object of which is to enforce a lien upon real estate or to affect the title to real estate or a lien or encumbrance thereon, plaintiff or his attorney shall, after the filing of the complaint, file in the office of the county clerk or register of deeds and mortgages, as the case may be, of the county in which the affected real estate is situate, a written notice of the pendency of the action, which shall set forth the title and the general object thereof, with a description of the affected real estate.

No notice of lis pendens shall be filed under this article in an action to recover a judgment for money or damages only.

Repealer.

40. The following are repealed:

N.J.S.2A:44-64 through 2A:44-104, inclusive; N.J.S.2A:44-106 through 2A:44-124, inclusive; and section 1 of P.L.1979, c.301 (C.2A:44-124.1).

41. This act shall take effect 120 days after enactment and shall apply to any improvement for which a construction permit is issued on or after that date.

Approved December 23, 1993.

CHAPTER 319

AN ACT concerning municipal police officer age requirements and amending P.L.1979, c.461.

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

1. Section 1 of P.L.1979, c.461 (C.40A:14-127.1) is amended to read as follows:

C.40A:14-127.1 Reappointment of certain law enforcement officers.

1. a. Notwithstanding the provisions of any other law to the contrary, any former State trooper, sheriff's officer or deputy, or county or municipal police officer who has separated from service voluntarily or involuntarily other than by removal for cause on charges of misconduct or delinquency, shall be deemed to meet the maximum age requirement for appointment established by N.J.S.40A:14-127, if his actual age, less the number of years of his previous service as a law enforcement officer, would meet the maximum age requirement established by said section, but no person may be appointed who is over the age of 45 as of the date of his reappointment; except that in the case of a State trooper, sheriff's officer or deputy, or county or municipal police officer whose separation from service was involuntary due to a lay-off or reduction in force, such person shall be deemed to meet the maximum age requirement for appointment by complying with the procedure established hereinbefore without regard to his actual age at the time of reappointment.

b. For the purposes of meeting the maximum age requirement for appointment established by N.J.S.40A:14-127 and for the purpose of taking any civil service examination for appointment as a municipal police officer, the Commissioner of Personnel, for good cause shown, may deem an individual a former State trooper, sheriff's officer or deputy, or county or municipal police officer in accordance with subsection a. of this section, even though that individual's separation from current service will not occur except upon a new appointment.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 320

AN ACT concerning the taxation of nonresident taxpayers under the gross income tax, amending N.J.S.54A:3-1, 54A:5-7 and P.L.1993, c. (C.) (now pending before the Legislature as Assembly Committee Substitute for Assembly, Nos. 1071, 2060, and 886 of 1992) and supplementing Title 54A of the New Jersey Statutes.

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

1. 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 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).

2. Section 4 of P.L.1993, c.178 (C.54A:2-1.1) is amended to read as follows:

C.54A:2-1.1 Determination of tax, income of nonresident.

4. a. For a taxable year to which a certification pursuant to section 3 of P.L.1993, c.320 (C.54A:2-1.2) does not apply, notwithstanding the provisions of N.J.S.54A:2-1, the tax due for each taxable year from a nonresident taxpayer shall be equal to the tax computed pursuant to N.J.S.54A:2-1 as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the taxpayer's income from sources within this State determined in accordance with the provisions of N.J.S.54A:5-7 and N.J.S.54A:5-8 and the denominator of which is that taxpayer's gross income for the taxable year as if such taxpayer were a resident.

b. For a taxable year to which a certification pursuant to section 3 of P.L.1993, c.320 (C.54A:2-1.2) applies, the income of a nonresident individual shall be that part of the individual's income derived from sources within this State as defined in N.J.S.54A:1-1 et seq., except that income of a nonresident individual shall not include income derived from sources within this State from pensions and annuities as set forth in subsection j. of N.J.S.54A:5-1.

C.54A:2-1.2 Review of New York enactments by Attorney General.

3. The Attorney General shall review the enactments of the State of New York to determine if the method of taxation of the income from New York sources of taxpayers that are not residents of New York, enacted pursuant to 1987 N.Y. Laws 28, compiled as subsection (e) of N.Y. Tax 601, and requiring that every New York nonresident taxpayer compute a tax as if such resident were a resident and multiply that liability by a fraction the numerator of which is the taxpayer's New York source income as therein determined and the denominator of which is the taxpayer's federal adjusted gross income for the taxable year, has been repealed or superceded by subsequent enactment so as to restrict the computation of liability owed to New York to a method based only on the New York source income of the taxpayer. If the Attorney General shall so determine, the Attorney General shall, not later than five days after such enactment, certify to the Director of the Division of Taxation the taxable years for which the fractional method of liability calculation for nonresident taxpayers has been repealed or superceded.

4. This act shall take effect immediately but remain inoperative until enactment of P.L.1993, c.178.

Approved December 23, 1993.

CHAPTER 321

AN ACT requiring health insurance benefits for “off-label” uses of certain drugs and supplementing P.L.1938, c.366 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985, c.236 (C.17:48E-1 et seq.), chapter 26 of Title 17B of the New Jersey Statutes, chapter 27 of Title 17B of the New Jersey Statutes, and P.L.1973, c.337 (C.26:2J-1 et seq.).

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

C.26:1A-36.9 Findings, declarations, “off-label” drugs.

1. The Legislature finds and declares that:

a. Many citizens of this State rely upon health insurance to cover the cost of obtaining health care.

b. It is essential that the citizens’ expectation that their health care costs will be paid by their insurance policies is not disappointed and that they obtain the coverage necessary and appropriate for their care within the terms of their insurance policies.

c. Currently, some insurers deny payment for drugs that have been approved by the Federal Food and Drug Administration (FDA) when the drugs are prescribed for treatments other than those stated in the labelling approved by the FDA (“off-label” use) while other insurers providing similar coverage terms do pay for “off-label” use.

d. Denial of payment for “off-label” use can interrupt or effectively deny access to necessary and appropriate treatment for a person being treated for a life-threatening illness.

e. “Off-label” use of an FDA-approved drug is legal when prescribed in a medically appropriate way and is often necessary to provide needed care. Approximately 50 percent of cancer patients receive some type of “off label” drug in their treatment. The FDA and the federal Department of Health and Human Services recognize the wide variety of effective “off-label” uses of FDA-approved drugs. Information on the appropriate “off-label” use of FDA-approved drugs is obtained from compendia published by the United States Pharmacopoeial Convention, the American Medical Association, and the American Society of Hospital Pharmacists. In addition, scientific studies of “off-label” use of drugs published in recognized peer-reviewed professional journals provide information on appropriate uses of “off-label” drugs.

f. The “Omnibus Budget Reconciliation Act of 1990,” Pub. L. 101-508, requires Medicaid agencies to pay for “off-label” use of

drugs prescribed for Medicaid patients if the use is stated in any of the three compendia or peer-reviewed literature; thereby providing recognition of the three compendia and peer-reviewed literature as appropriate sources for reimbursement.

g. "Off-label" use of FDA-approved drugs provides efficacious drugs at a lower cost. To require that all appropriate uses of a drug undergo approval by the FDA may substantially increase the cost of drugs and delay or even deny patients' ability to obtain medically effective treatment. FDA approval for each use would require substantial expenditure and time to undergo the clinical trials necessary to obtain FDA approval.

h. Reimbursement for "off-label" uses of FDA-approved drugs is necessary to conform to the way in which appropriate medical treatment is provided, to make needed drugs available to patients, and may help to contain health care costs.

C.17:48-6h Hospital service corporation, benefits for "off-label" drugs required.

2. a. Except as provided in P.L.1992, c.161 (C.17B:27A-2 et al.) and P.L.1992, c.162 (C.17B:27A-17 et seq.), no group or individual hospital service corporation contract which provides benefits for expenses incurred in prescribing drugs approved by the federal Food and Drug Administration shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the contract provides benefits to any subscriber or other person covered thereunder for expenses incurred in prescribing a drug for a treatment for which it has not been approved by the Food and Drug Administration if the drug is recognized as being medically appropriate for the specific treatment for which it has been prescribed in one of the following established reference compendia:

- (1) the American Medical Association Drug Evaluations;
- (2) the American Hospital Formulary Service Drug Information;
- (3) the United States Pharmacopoeia Drug Information;

or, it is recommended by a clinical study or review article in a major peer-reviewed professional journal.

b. Notwithstanding the provisions of this section, coverage shall not be required for any experimental or investigational drug or any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed. The benefits provided pursuant to this section shall be provided to the same extent as other benefits

under the contract for drugs prescribed for a treatment approved by the Food and Drug Administration.

c. This section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the premium.

d. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

C.17:48A-7g Medical service corporation, benefits for "off-label" drugs required.

3. a. Except as provided in P.L.1992, c.161 (C.17B:27A-2 et al.) and P.L.1992, c.162 (C.17B:27A-17 et seq.), no group or individual medical service corporation contract which provides benefits for expenses incurred in prescribing drugs approved by the federal Food and Drug Administration shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the contract provides benefits to any subscriber or other person covered thereunder for expenses incurred in prescribing a drug for a treatment for which it has not been approved by the Food and Drug Administration if the drug is recognized as being medically appropriate for the specific treatment for which it has been prescribed in one of the following established reference compendia:

- (1) the American Medical Association Drug Evaluations;
- (2) the American Hospital Formulary Service Drug Information;
- (3) the United States Pharmacopoeia Drug Information;

or, it is recommended by a clinical study or review article in a major peer-reviewed professional journal.

b. Notwithstanding the provisions of this section, coverage shall not be required for any experimental or investigational drug or any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed. The benefits provided pursuant to this section shall be provided to the same extent as other benefits under the contract for drugs prescribed for a treatment approved by the Food and Drug Administration.

c. This section shall apply to all medical service corporation contracts in which the medical service corporation has reserved the right to change the premium.

d. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

C.17:48E-35.5 Health service corporation, benefits for “off-label” drugs required.

4. a. Except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.) and P.L.1992, c.162 (C.17B:27A-17 et seq.), no group or individual health service corporation contract which provides benefits for expenses incurred in prescribing drugs approved by the federal Food and Drug Administration shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the contract provides benefits to any subscriber or other person covered thereunder for expenses incurred in prescribing a drug for a treatment for which it has not been approved by the Food and Drug Administration if the drug is recognized as being medically appropriate for the specific treatment for which it has been prescribed in one of the following established reference compendia:

- (1) the American Medical Association Drug Evaluations;
- (2) the American Hospital Formulary Service Drug Information;
- (3) the United States Pharmacopoeia Drug Information;

or, it is recommended by a clinical study or review article in a major-peer reviewed professional journal.

b. Notwithstanding the provisions of this section, coverage shall not be required for any experimental or investigational drug or any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed. The benefits provided pursuant to this section shall be provided to the same extent as other benefits under the contract for drugs prescribed for a treatment approved by the Food and Drug Administration.

c. This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the premium.

d. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

C.17B:26-2.1g Individual health insurance policy, benefits for “off-label” drugs required.

5. a. Except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.), no individual health insurance policy which provides benefits for expenses incurred in prescribing drugs approved by the federal Food and Drug Administration shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date

of this act, unless the policy provides benefits to any policyholder or other person covered thereunder for expenses incurred in prescribing a drug for a treatment for which it has not been approved by the Food and Drug Administration if the drug is recognized as being medically appropriate for the specific type of treatment for which the drug has been prescribed in one of the following established reference compendia:

- (1) the American Medical Association Drug Evaluations;
- (2) the American Hospital Formulary Service Drug Information;
- (3) the United States Pharmacopoeia Drug Information;

or, it is recommended by a clinical study or review article in a major-peer reviewed professional journal.

b. Notwithstanding the provisions of this section, coverage shall not be required for any experimental or investigational drug or any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed. The benefits provided pursuant to this section shall be provided to the same extent as other benefits under the policy for drugs prescribed for a treatment approved by the Food and Drug Administration.

c. This section shall apply to all individual health insurance policies in which the insurer has reserved the right to change the premium.

d. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

C.17B:27-46.1g Group health insurance policy, benefits for "off-label" drugs required.

6. a. Except as otherwise provided in P.L.1992, c.162 (C.17B:27A-17 et seq.), no group health insurance policy which provides benefits for expenses incurred in prescribing drugs approved by the federal Food and Drug Administration shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State, on or after the effective date of this act unless the policy provides benefits to any policyholder or other person covered thereunder for expenses incurred in prescribing a drug for a treatment for which it has not been approved by the Food and Drug Administration if the drug is recognized as being medically appropriate for the specific treatment for which the drug has been prescribed in one of the following established reference compendia:

- (1) the American Medical Association Drug Evaluations;
- (2) the American Hospital Formulary Service Drug Information;

(3) the United States Pharmacopoeia Drug Information;
or, it is recommended by a clinical study or review article in a major-peer reviewed professional journal.

b. Notwithstanding the provisions of this section, coverage shall not be required for any experimental or investigational drug or any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed. The benefits provided pursuant to this section shall be provided to the same extent as other benefits under the policy for drugs prescribed for treatments approved by the Food and Drug Administration.

c. This section shall apply to all group health insurance policies in which the insurer has reserved the right to change the premium.

d. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

C.26:2J-4.5 Health maintenance organization, benefits for "off-label" drugs required.

7. a. Notwithstanding any provision of law to the contrary, and except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.) or P.L.1992, c.162 (C.17B:27A-17 et seq.), a certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued on or after the effective date of this act for a health maintenance organization which provides health care services for prescribed drugs approved by the federal Food and Drug Administration unless the health maintenance organization provides health care services to any enrollee for a drug prescribed for a treatment for which it has not been approved by the Food and Drug Administration if it is recognized to be medically appropriate for the specific treatment for which the drug has been prescribed in one of the following established reference compendia:

- (1) the American Medical Association Drug Evaluations;
- (2) the American Hospital Formulary Service Drug Information;
- (3) the United States Pharmacopoeia Drug Information;

or, it is recommended by a clinical study or review article in a major-peer reviewed professional journal.

b. Notwithstanding the provisions of this section, coverage shall not be required for any experimental or investigational drug or any drug which the Food and Drug Administration has determined to be contraindicated for the specific treatment for which the drug has been prescribed. Health care services provided pursu-

ant to this section shall be determined and provided to the same extent as other services under the enrollee plan for drugs prescribed for treatments which have been approved by the Food and Drug Administration.

c. This section shall apply to health maintenance organization plans in which the right to change the enrollee charge has been reserved.

d. Any coverage of a drug required by this section shall also include medically necessary services associated with the administration of the drug.

C.26:1A-36.10 Rules, regulations.

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

9. This act shall take effect on the 180th day after enactment.

Approved December 23, 1993.

CHAPTER 322

AN ACT appropriating funds from the "Public Purpose Buildings and Community-Based Facilities Construction Fund" to the Department of Corrections for the expansion, renovation and service upgrade of the New Jersey Training School for Boys at Jamesburg.

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

1. There is appropriated to the Department of Corrections from the "Public Purpose Buildings and Community-Based Facilities Construction Fund" created pursuant to the "Public Purpose Buildings and Community-Based Facilities Construction Bond Act of 1989," P.L.1989, c.184, the sum of \$6,000,000 for the following purpose:

DEPARTMENT OF CORRECTIONS	
New Jersey Training School for Boys...	\$6,000,000
Special Purpose:	
Construct new modular units	(\$6,000,000)
Total Appropriation	<u>\$6,000,000</u>

The funds appropriated in this section may be expended only after the Department of Corrections has prepared and the Joint Budget Oversight Committee has approved a spending plan for the funds.

2. There is also appropriated from the "Public Purpose Buildings and Community-Based Facilities Construction Fund," such items as may be necessary to meet any expense incurred by the issuing officials under P.L.1989, c.184 for advertising, engraving, printing, clerical, legal or other services necessary to carry out the duties imposed upon them by the provisions of that act.

3. In order to provide flexibility in administering the provisions of this act, the Commissioner of the Department of Corrections may apply to the Director of the Division of Budget and Accounting in the Department of the Treasury for permission to transfer a part of any item to any other item within the respective department accounts in the "Public Purpose Buildings and Community-Based Facilities Construction Fund," provided however that any of the funds appropriated pursuant to section 1 of P.L.1993, c.322 that are not expended for the purpose provided in section 1 shall revert to the undesignated balance in the "Public Purpose Buildings and Community-Based Facilities Construction Fund." The transfers shall be made in a manner consistent with section 29 of P.L.1989, c.184.

4. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 323

AN ACT concerning the expiration of the law governing the distribution and disposition of the parimutuel pool at certain horse race meetings, P.L.1984, c.236.

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

1. Section 3 of P.L.1984, c.236 is amended to read as follows:

3. This act shall take effect January 1, 1986 and shall expire December 31, 2000.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 324

AN ACT concerning the solemnization of marriages and amending R.S.37:1-13.

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

1. R.S.37:1-13 is amended to read as follows:

Authorization to solemnize marriages.

37:1-13. Each judge of a federal district court, United States magistrate, judge of a municipal court, judge of the Superior Court, judge of a tax court, retired judge of the Superior Court or Tax Court, or judge of the Superior Court or Tax Court who has resigned in good standing, surrogate of any county, county clerk and any mayor or the deputy mayor when authorized by the mayor, or chairman of any township committee or village president of this State, and every minister of every religion, are hereby authorized to solemnize marriage between such persons as may lawfully enter into the matrimonial relation; and every religious society, institution or organization in this State may join together in marriage such persons according to the rules and customs of the society, institution or organization.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 325

AN ACT authorizing municipal governing bodies to accept a bond, note or other obligations as partial consideration for the private sale and assignment of municipally held tax sale certificates and amending and supplementing P.L.1993, c.113.

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

1. Section 2 of P.L.1993, c.113 (C.54:5-113.1) is amended to read as follows:

C.54:5-113.1 Acceptance of bond, note, other obligation as consideration for sale of certificate.

2. In connection with a sale of one or more certificates of tax sale pursuant to R.S.54:5-113, the governing body of a municipality, either on its own or jointly with other municipalities, may accept, as partial consideration for the sale of such certificate or certificates, which may be sold separately or in bulk with other such certificates as determined by resolution of the governing body or bodies, a bond, note or other obligation of the purchaser on the terms and conditions set forth in the resolution of the governing body; provided, however, that notwithstanding any other provision of R.S.54:5-113 to the contrary, the sale of such certificate or certificates pursuant to this section shall be approved by the Local Finance Board of the Division of Local Government Services in the Department of Community Affairs and shall be publicly advertised and publicly bid; and provided further that any bond, note or other obligation shall:

- a. mature within 20 years from the date of the sale;
- b. have a principal amount at maturity of not more than 75% of the total amount of the liens charged against the real estate, and the principal amount, when added to the value of the other consideration received by the municipality at the time of the sale, shall not be less than 70% of the total amount of the liens charged against the real estate;
- c. bear interest at a fixed rate at least equal to 2% in excess of the discount rate in effect at the Federal Reserve Bank of New York on the date of the sale; and
- d. be secured by and payable from a tax sale certificate and the proceeds thereof in such manner and on such terms and conditions as shall be agreed upon by the governing body.

2. Section 3 of P.L.1993, c.113 (C.40A:4-88) is amended to read as follows:

C.40A:4-88 Filing of amendment, correction in local budget.

3. The governing body of a municipality that receives funds from the sale of tax sale certificates pursuant to section 2 of

P.L.1993, c.113 (C.54:5-113.1) may file any amendment or correction in its local budget that may be required to properly reflect that receipt. Notwithstanding any other law, rule or regulation to the contrary, such funds may be used during the current local budget year, subject to the limits on final appropriations pursuant to P.L.1976, c.68 (C.40A:4-45.1 et seq.), for any lawful purposes deemed appropriate by the municipal governing body.

C.54:5-113.3 Bond, note, obligation deemed asset of municipality.

3. To the extent of its value, the bond, note or other obligation referred to in section 2 of P.L.1993, c.113 (C.54:5-113.1) shall be deemed an asset of the municipality and, as such, be available to the municipality for appropriate use, including sale, publicly or privately, as approved by a vote of two-thirds of the full governing body of the municipality.

C.54:5-113.4 Pledge, transfer of tax sale certificates.

4. Notwithstanding the provisions of any other law, rule or regulation to the contrary, a municipality may assign, pledge or transfer to the New Jersey Economic Development Authority tax sale certificates held by the municipality for property located within its boundaries, together with subsequent liens thereon, as collateral for any bonds or notes issued by the authority by or on behalf of the municipality on the same terms and conditions as set forth in section 2 of P.L.1993, c.113 (C.54:5-113.1) for any purposes permitted by law. For the purposes of this section "municipality" shall include municipalities acting jointly pursuant to section 2 of P.L.1993, c.113 (C.54:5-113.1).

5. Section 4 of P.L.1993, c.113 (C.54:5-113.2) is amended to read as follows:

C.54:5-113.2 Removal of lessee, tenant.

4. No lessee or tenant or the assign, under-tenant or legal representative of such lessee or tenant may be removed by a lienholder or successor thereof established under this act and any amendments and supplements thereto except for good cause as provided under section 2 of P.L.1974, c.49 (C.2A:18-61.1). This section shall apply to any lienholder or successor thereof who has become a lienholder or successor as a result of the sale of tax sale certificates pursuant to section 2 of P.L.1993, c.113 (C.54:5-113.1).

6. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 326

AN ACT concerning 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.39:4-66.2 Avoidance of traffic control signal, sign; violations, penalties.

1. Except for emergency vehicles and motor vehicles being operated at the direction of a law enforcement officer, no person shall drive a motor vehicle on public property, except public roads or highways, or private property, with or without the permission of the owner, for the purpose of avoiding a traffic control signal or sign.

Any person found guilty of violating the provisions of this act shall be liable for a penalty of not less than \$50.00 or more than \$200.00 or imprisonment for a term not exceeding 15 days, or both.

2. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 327

AN ACT requiring the offer of health insurance benefits for expenses incurred in testing and counselling to promote health and reduce health risks and supplementing P.L.1938, c.366 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985, c.236 (C.17:48E-1 et seq.), Title 17B of the New Jersey Statutes, P.L.1973, c.337 (C.26:2J-1 et seq.) and Title 26 of the Revised Statutes.

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

C.26:1A-36.11 Short title.

1. This act shall be known and may be cited as the "Health Wellness Promotion Act."

C.26:1A-36.12 Findings, declarations.

2. The Legislature finds and declares that the development of health promotion and health-risk reduction programs will serve the

best interests of the public welfare by encouraging health care consumers to engage in healthy lifestyle behaviors which will result in a reduction of the long-term costs of providing health care. To this end, participation in healthy lifestyles should be encouraged by requiring that health insurance benefits and health care services be provided for wellness health examinations and counselling.

C.17:48-6i Hospital service corporation, benefits for health promotion.

3. a. Except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.) or P.L.1992, c.162 (C.17B:27A-17 et seq.), every hospital service corporation authorized to do business in this State shall, no later than December 31, 1994, offer for sale individual and group health care contracts in accordance with accepted underwriting standards which shall provide benefits to any subscriber or other person covered thereunder for expenses incurred in a health promotion program through wellness health examinations and counselling, which program shall include, but not be limited to, the following tests and services:

(1) For all persons 20 years of age and older, annual tests to determine blood hemoglobin; blood pressure; blood glucose level; and blood cholesterol level or, alternatively, low-density lipoprotein (LDL) level and blood high-density lipoprotein (HDL) level;

(2) For all persons 35 years of age or older, a glaucoma eye test every five years;

(3) For all persons 40 years of age or older, an annual stool examination for presence of blood;

(4) For all persons 45 years of age or older, a left-sided colon examination of 35 to 60 centimeters every five years;

(5) For all women 20 years of age or older, a pap smear every two years;

(6) For all women 40 years of age or older, an annual mammogram examination;

(7) For all adults, recommended immunizations; and

(8) For all persons 20 years of age or older, an annual consultation with a health care provider to discuss lifestyle behaviors that promote health and well-being including, but not limited to, smoking control, nutrition and diet recommendations, exercise plans, lower back protection, weight control, immunization practices, breast self-examination, testicular self-examination and seat belt usage in motor vehicles.

Notwithstanding the provisions of this subsection to the contrary, if a physician or other health care provider recommends that it

would be medically appropriate for a covered person to receive a different schedule of tests and services than that provided for under this subsection, the hospital service corporation shall provide payment for the tests or services actually provided, within the limits of the amounts listed in subsection b. of this section.

b. Every individual or group health care contract offered for sale in this State by a hospital service corporation pursuant to subsection a. of this section shall provide payment for the benefits set forth in subsection a. of this section in an amount which shall not exceed: \$125 a year for each person between the ages of 20 to 39, inclusive; \$145 a year for each man age 40 and over; and \$235 a year for each woman age 40 and over; except that for persons 45 years of age or older, the cost of a left-sided colon examination shall not be included in the above amount; however, no hospital service corporation shall be required to provide payment for benefits for a left-sided colon examination in excess of \$150.

c. Commencing April 1, 1994 and every year thereafter, the Commissioner of Insurance, in consultation with the Department of the Treasury, shall adjust the threshold amounts provided by subsection b. of this section in direct proportion to the increase or decrease in the consumer price index for all urban consumers in the New York City and Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which the adjustment is made.

C.17:48A-7h Medical service corporation, benefits for health promotion.

4. a. Except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.) or P.L.1992, c.162 (C.17B:27A-17 et seq.), every medical service corporation authorized to do business in this State shall, no later than December 31, 1994, offer for sale individual and group health care contracts in accordance with accepted underwriting standards which shall provide benefits to any subscriber or other person covered thereunder for expenses incurred in a health promotion program through wellness health examinations and counselling, which program shall include, but not be limited to, the following tests and services:

- (1) For all persons 20 years of age and older, annual tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or, alternatively, low-density lipoprotein (LDL) level and blood high-density lipoprotein (HDL) level;
- (2) For all persons 35 years of age or older, a glaucoma eye test every five years;

(3) For all persons 40 years of age or older, an annual stool examination for presence of blood;

(4) For all persons 45 years of age or older, a left-sided colon examination of 35 to 60 centimeters every five years;

(5) For all women 20 years of age or older, a pap smear every two years;

(6) For all women 40 years of age or older, an annual mammogram examination;

(7) For all adults, recommended immunizations; and

(8) For all persons 20 years of age or older, an annual consultation with a health care provider to discuss lifestyle behaviors that promote health and well-being including, but not limited to, smoking control, nutrition and diet recommendations, exercise plans, lower back protection, weight control, immunization practices, breast self-examination, testicular self-examination and seat belt usage in motor vehicles.

Notwithstanding the provisions of this subsection to the contrary, if a physician or other health care provider recommends that it would be medically appropriate for a covered person to receive a different schedule of tests and services than that provided for under this subsection, the medical service corporation shall provide payment for the tests or services actually provided, within the limits of the amounts listed in subsection b. of this section.

b. Every individual or group basic health care contract offered for sale in this State by a medical service corporation pursuant to subsection a. of this section shall provide payment for the benefits set forth in subsection a. of this section in an amount which shall not exceed: \$125 a year for each person between the ages of 20 to 39, inclusive; \$145 a year for each man age 40 and over; and \$235 a year for each woman age 40 and over; except that for persons 45 years of age or older, the cost of a left-sided colon examination shall not be included in the above amount; however, no medical service corporation shall be required to provide payment for benefits for a left-sided colon examination in excess of \$150.

c. Commencing April 1, 1994 and every year thereafter, the Commissioner of Insurance, in consultation with the Department of the Treasury, shall adjust the threshold amounts provided by subsection b. of this section in direct proportion to the increase or decrease in the consumer price index for all urban consumers in the New York City and Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which the adjustment is made.

C.17:48E-35.6 Health service corporation, benefits for health promotion.

5. a. Except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.) or P.L.1992, c.162 (C.17B:27A-17 et seq.), every health service corporation authorized to do business in this State shall, no later than December 31, 1994, offer for sale individual and group health care contracts in accordance with accepted underwriting standards which shall provide benefits to any subscriber or other person covered thereunder for expenses incurred in a health promotion program through wellness health examinations and counselling, which program shall include, but not be limited to, the following tests and services:

(1) For all persons 20 years of age and older, annual tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or, alternatively, low-density lipoprotein (LDL) level and blood high-density lipoprotein (HDL) level;

(2) For all persons 35 years of age or older, a glaucoma eye test every five years;

(3) For all persons 40 years of age or older, an annual stool examination for presence of blood;

(4) For all persons 45 years of age or older, a left-sided colon examination of 35 to 60 centimeters every five years;

(5) For all women 20 years of age or older, a pap smear every two years;

(6) For all women 40 years of age or older, an annual mammogram examination;

(7) For all adults, recommended immunizations; and

(8) For all persons 20 years of age or older, an annual consultation with a health care provider to discuss lifestyle behaviors that promote health and well-being including, but not limited to, smoking control, nutrition and diet recommendations, exercise plans, lower back protection, weight control, immunization practices, breast self-examination, testicular self-examination and seat belt usage in motor vehicles.

Notwithstanding the provisions of this subsection to the contrary, if a physician or other health care provider recommends that it would be medically appropriate for a covered person to receive a different schedule of tests and services than that provided for under this subsection, the health service corporation shall provide payment for the tests or services actually provided, within the limits of the amounts listed in subsection b. of this section.

b. Every individual or group health care contract offered for sale in this State by a health service corporation pursuant to sub-

section a. of this section shall provide payment for the benefits set forth in subsection a. of this section in an amount which shall not exceed: \$125 a year for each person between the ages of 20 to 39, inclusive; \$145 a year for each man age 40 and over; and \$235 a year for each woman age 40 and over; except that for persons 45 years of age or older, the cost of a left-sided colon examination shall not be included in the above amount; however, no health service corporation shall be required to provide payment for benefits for a left-sided colon examination in excess of \$150.

c. Commencing April 1, 1994 and every year thereafter, the Commissioner of Insurance, in consultation with the Department of the Treasury, shall adjust the threshold amounts provided by subsection b. of this section in direct proportion to the increase or decrease in the consumer price index for all urban consumers in New York City and the Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which the adjustment is made.

C.17B:26-2.1h Individual health insurer, benefits for health promotion.

6. a. Except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.), every health insurer authorized to do business in this State in accordance with the provisions of chapter 26 of Title 17B of the New Jersey Statutes shall, no later than December 31, 1994, offer for sale individual health care policies in accord with accepted underwriting standards for payment of benefits to each person covered thereunder for expenses incurred in a health promotion program through wellness health examinations and counselling, which program shall include, but not be limited to, the following tests and services:

(1) For all persons 20 years of age and older, annual tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or, alternatively, low-density lipoprotein (LDL) level and blood high-density lipoprotein (HDL) level;

(2) For all persons 35 years of age or older, a glaucoma eye test every five years;

(3) For all persons 40 years of age or older, an annual stool examination for presence of blood;

(4) For all persons 45 years of age or older, a left-sided colon examination of 35 to 60 centimeters every five years;

(5) For all women 20 years of age or older, a pap smear every two years;

(6) For all women 40 years of age or older, an annual mammogram examination;

(7) For all adults, recommended immunizations; and

(8) For all persons 20 years of age or older, an annual consultation with a health care provider to discuss lifestyle behaviors that promote health and well-being including, but not limited to, smoking control, nutrition and diet recommendations, exercise plans, lower back protection, weight control, immunization practices, breast self-examination, testicular self-examination and seat belt usage in motor vehicles.

Notwithstanding the provisions of this subsection to the contrary, if a physician or other health care provider recommends that it would be medically appropriate for a covered person to receive a different schedule of tests and services than that provided for under this subsection, the insurer shall provide payment for the tests or services actually provided, within the limits of the amounts listed in subsection b. of this section.

b. Every individual health care policy offered for sale in this State by an insurer pursuant to subsection a. of this section shall provide payment for the benefits set forth in subsection a. of this section in an amount which shall not exceed: \$125 a year for each person between the ages of 20 to 39, inclusive; \$145 a year for each man age 40 and over; and \$235 a year for each woman age 40 and over; except that for persons 45 years of age or older, the cost of a left-sided colon examination shall not be included in the above amount; however, no insurer shall be required to provide payment for benefits for a left-sided colon examination in excess of \$150.

c. Commencing April 1, 1994 and every year thereafter, the Commissioner of Insurance, in consultation with the Department of the Treasury, shall adjust the threshold amounts provided by subsection b. of this section in direct proportion to the increase or decrease in the consumer price index for all urban consumers in the New York City and Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which the adjustment is made.

d. The health care policies required pursuant to this section shall be offered only by health insurers which issue or deliver primary health insurance coverage in this State providing hospital or medical expense benefits. Primary health insurance coverage shall not include the following plans, policies, or contracts: accident only, credit, disability, long-term care, Medicare supplement coverage, CHAMPUS supplement coverage, coverage for Medi-

care services pursuant to a contract with the United States government, coverage for Medicaid services pursuant to a contract with the State, 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.

C.17B:27-46.1h Group health insurer, benefits for health promotion.

7. a. Except as otherwise provided in P.L.1992, c.162 (C.17B:27A-17 et seq.), every health insurer authorized to do business in this State in accordance with the provisions of chapter 27 of Title 17B of the New Jersey Statutes shall, no later than December 31, 1994, offer for sale group health care policies in accordance with accepted underwriting standards for payment of benefits to each person covered thereunder for expenses incurred in a health promotion program through wellness health examinations and counselling, which program shall include, but not be limited to, the following tests and services:

(1) For all persons 20 years of age and older, annual tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or, alternatively, low-density lipoprotein (LDL) level and blood high-density lipoprotein (HDL) level;

(2) For all persons 35 years of age or older, a glaucoma eye test every five years;

(3) For all persons 40 years of age or older, an annual stool examination for presence of blood;

(4) For all persons 45 years of age or older, a left-sided colon examination of 35 to 60 centimeters every five years;

(5) For all women 20 years of age or older, a pap smear every two years;

(6) For all women 40 years of age or older, an annual mammogram examination;

(7) For all adults, recommended immunizations; and

(8) For all persons 20 years of age or older, an annual consultation with a health care provider to discuss lifestyle behaviors that promote health and well-being including, but not limited to, smoking control, nutrition and diet recommendations, exercise plans, lower back protection, weight control, immunization practices, breast self-examination, testicular self-examination and seat belt usage in motor vehicles.

Notwithstanding the provisions of this subsection to the contrary, if a physician or other health care provider recommends

that it would be medically appropriate for a covered person to receive a different schedule of tests and services than that provided for under this subsection, the insurer shall provide payment for the tests or services actually provided, within the limits of the amounts listed in subsection b. of this section.

b. Every group health care policy offered for sale in this State by an insurer pursuant to subsection a. of this section shall provide payment for the benefits set forth in subsection a. in an amount which shall not exceed: \$125 a year for each person between the ages of 20 to 39, inclusive; \$145 a year for each man age 40 and over; and \$235 a year for each woman age 40 and over; except that for persons 45 years of age or older, the cost of a left-sided colon examination shall not be included in the above amount; however, no insurer shall be required to provide payment for benefits for a left-sided colon examination in excess of \$150.

c. Commencing April 1, 1994 and every year thereafter, the Commissioner of Insurance, in consultation with the Department of the Treasury, shall adjust the threshold amounts provided by subsection b. of this section in direct proportion to the increase or decrease in the consumer price index for all urban consumers in the New York City and Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which the adjustment is made.

d. The health care policies required pursuant to this section shall be offered only by health insurers which issue or deliver primary health insurance coverage in this State providing hospital or medical expense benefits. Primary health insurance coverage shall not include the following plans, policies, or contracts: accident only, credit, disability, long-term care, Medicare supplement coverage, CHAMPUS supplement coverage, coverage for Medicare services pursuant to a contract with the United States government, coverage for Medicaid services pursuant to a contract with the State, 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.

C.26:2J-4.6 Health maintenance organization, benefits for health promotion.

8. a. Except as otherwise provided in P.L.1992, c.161 (C.17B:27A-2 et al.) and P.L.1992, c.162 (C.17B:27A-17 et seq.) and notwithstanding any provision of this act or any other law to the contrary, a certificate of authority to establish and operate a

health maintenance organization in this State shall not be issued or continued by the Commissioner of Health on or after the effective date of this act unless the health maintenance organization offers health care services to any enrollee, no later than December 31, 1994, for a health promotion program providing wellness health examinations and counselling, which program shall include, but not be limited to, the following tests and services:

(1) For all persons 20 years of age and older, annual tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or, alternatively, low-density lipoprotein (LDL) level and blood high-density lipoprotein (HDL) level;

(2) For all persons 35 years of age or older, a glaucoma eye test every five years;

(3) For all persons 40 years of age or older, an annual stool examination for presence of blood;

(4) For all persons 45 years of age or older, a left-sided colon examination of 35 to 60 centimeters every five years;

(5) For all women 20 years of age or older, a pap smear every two years;

(6) For all women 40 years of age or older, an annual mammogram examination;

(7) For all adults, recommended immunizations; and

(8) For all persons 20 years of age or older, an annual consultation with a health care provider to discuss lifestyle behaviors that promote health and well-being including, but not limited to, smoking control, nutrition and diet recommendations, exercise plans, lower back protection, weight control, immunization practices, breast self-examination, testicular self-examination and seat belt usage in motor vehicles.

Notwithstanding the provisions of this subsection to the contrary, if a physician or other health care provider recommends that it would be medically appropriate for an enrollee to receive a different schedule of tests and services than that provided for under this subsection, the health maintenance organization shall provide coverage for the tests or services actually provided, within the limits of the amounts listed in subsection b. of this section.

b. A health maintenance organization shall not be required to offer services to enrollees set forth in subsection a. of this section for which the value exceeds: \$125 a year for each person between the ages of 20 to 39, inclusive; \$145 a year for each man age 40 and over; and \$235 a year for each woman age 40 and over; except that for persons 45 years of age or older, the value of a

left-sided colon examination shall not be included in the above amount; however, no health maintenance organization shall be required to provide services to enrollees for a left-sided colon examination with a value in excess of \$150.

c. Commencing April 1, 1994 and every year thereafter, the Commissioner of Health, in consultation with the Department of the Treasury, shall adjust the threshold amounts provided by subsection b. of this section in direct proportion to the increase or decrease in the consumer price index for all urban consumers in the New York City and Philadelphia areas as reported by the United States Department of Labor. The adjustment shall become effective on July 1 of the year in which it is reported.

d. Nothing in this act shall be construed to require that a health maintenance organization take any actions which conflict with the health benefits, underwriting and rating standards established by the federal government pursuant to subchapter XI of Pub.L.93-222 (42 U.S.C. §300e et seq.).

C.26:1A-36.13 Health Wellness Promotion Advisory Board.

9. a. There is created a Health Wellness Promotion Advisory Board which shall consist of three members, each of whom has a background in epidemiology and a demonstrated professional expertise in services, issues or programs relating to health wellness promotion, who are residents of the State, one of whom shall be appointed by the Governor, one by the President of the Senate and one by the Speaker of the General Assembly.

b. The terms of office of the members of the board shall be three years. Vacancies shall be filled for an unexpired term only in the manner provided for the original appointment.

c. Members of the board shall serve without compensation but shall be reimbursed for their reasonable and necessary traveling and other expenses incurred in the performance of their official duties.

d. The Commissioner of Health shall designate an officer or employee of the Department of Health to act as secretary of the board who shall not be a member of the board.

e. The board, for the purpose of transacting its business, shall meet at least once every six months at times and places fixed by the board. At its first meeting each year it shall organize and elect a chair from its members. Special meetings may also be held at times as the board may fix, or at the call of the chair or the Commissioner of Health. A timely written notice of the time, place

and purpose of any special meeting shall be mailed by the secretary to all members of the board.

f. A majority of the members of the board shall constitute a quorum for the transaction of business at any meeting.

g. The board shall advise and make recommendations to the Legislature pertaining to any revisions of medical testing and services that are deemed by the board to be appropriate for health promotion and that will encourage health care consumers to engage in healthy lifestyle behaviors which will result in a reduction of the long-term costs of providing health care. In deciding whether a recommendation should be made to add an additional medical test or service to those currently required by this act, the board shall consider the benefits as well as the cost to provide such a medical test or service. To assist the board in its consideration, the board shall select two organizations which have established expertise in the areas of epidemiology, sensitivity, specificity and predictive value of screening, disease protection, and health promotion tests. No additional test or service shall be added to those required under this act unless: (1) both organizations selected by the board agree that the medical test or counselling service will improve the quality of life, prolong good quality life, or reduce mortality; and (2) the board, subsequent to the agreement of both organizations, recommends that such additional test or service be made.

h. The board shall also appoint a committee which includes representatives of health care professions, including, but not limited to, physicians, nurses, chiropractors, dentists, dietitians, physician assistants, pharmacists and optometrists, and other interested persons to advise the board regarding medical testing and services that are deemed to be appropriate for health promotion and that will encourage health care consumers to engage in healthy lifestyle behaviors. The board shall determine the number, composition and terms of office of the committee members, and may establish such procedural and administrative requirements as it deems appropriate for the committee.

i. The board shall report annually to the Governor and the Legislature its findings and recommendations concerning the issues enumerated in subsection g. of this section.

C.26:1A-36.14 Regulations.

10. The Commissioner of Insurance, after consultation with the Health Wellness Promotion Advisory Board, established pursuant to section 9 of P.L.1993, c.327 (C.26:1A-36-13), shall, within

180 days of the effective date of this act, 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.

11. This act shall take effect on the 90th day after enactment.

Approved December 23, 1993.

CHAPTER 328

AN ACT establishing standards for certain motor vehicle leases.

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

C.56:12-50 Short title.

1. This act shall be known and may be cited as the "Truth in Motor Vehicles Leasing Act."

C.56:12-51 Definitions.

2. As used in this act:

"Dealer" means a person who, in the ordinary course of business, is engaged in the leasing of motor vehicles or who in the course of any 12-month period offers more than three motor vehicles for lease.

"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.

"Lease" means a contract or other agreement between a lessor and a lessee for the use of a motor vehicle by the lessee for a period of time exceeding 60 days, whether or not the lessee has the option to purchase or otherwise become the owner of the motor vehicle at the expiration of the lease.

"Lessee" means a person who leases a motor vehicle.

"Lessor" means a dealer who holds title to a motor vehicle leased to a lessee under a lease or who holds the lessor's rights under the lease.

"Motor vehicle" means a passenger automobile or motorcycle as defined in R.S.39:1-1 which is registered by the Division of Motor Vehicles in the Department of Law and Public Safety, except the living facilities of motor homes.

C.56:12-52 Lease requirements.

3. Every lease:

- a. Shall be in writing and contain the entire agreement between the lessor and the lessee and shall be signed by all parties to the lease;
- b. Shall state the names and addresses of all parties, and the phone number of the lessor;
- c. Shall state the dates when the lease is executed by the parties;
- d. Shall clearly and conspicuously identify the lease with the term "lease";
- e. Shall be completed in full without any blank spaces to be filled in after the contract is signed by the lessee;
- f. Shall specify the periodic basis or intervals when the lease payments shall be payable;
- g. Shall provide the following information concerning the conditions of the lease:
 - (1) Whether or not the lessee has the option to purchase the motor vehicle and at what price and time;
 - (2) The total amount of all payments, including any nonrefundable payment such as a down payment or capitalized cost reduction, required at the beginning of the lease, or a statement that no payment is required at the beginning of the lease;
 - (3) The number of periodic payments to be paid during the term of the lease and the amount of each payment;
 - (4) The amount of any liability the lease imposes upon the lessee at the end of the term of the lease, including any charges which may be imposed on the lessee because of excessive wear or damage of the motor vehicle and any disposition fees;
 - (5) If the lessee has the option to purchase the motor vehicle, the residual value of the motor vehicle at the end of the term of the lease;
 - (6) The total cost of the lease, which shall be the sum of the total amount of all payments required at the beginning of the lease, the total amount to be paid in periodic payments during the term of the lease, and the amount of any liability the lease imposes upon the lessee at the end of the term of the lease other than charges for wear or damage, and, if the lessee exercises an option to purchase the motor vehicle, any additional amount required to purchase the motor vehicle, less the residual value of the motor vehicle at the end of the term of the lease;
 - (7) The formula which will be used by the lessor to calculate the total cost to the lessee if the lease is terminated by the lessee at any time prior to the end of the term of the lease;
 - (8) The number of miles per year which the vehicle may be driven as permitted under the terms of the lease, and the charge per mile for the miles driven in excess of that permissible mileage;

(9) The liability of the lessee in the event the motor vehicle is damaged, stolen or otherwise lost and the option on the part of the lessee to purchase insurance to indemnify himself for the difference between the residual value of the motor vehicle and the amount due under the terms of the lease in that event; and

h. Shall provide the following information concerning the motor vehicle to be leased:

(1) Whether any use has been made of the motor vehicle by the lessor or any other person;

(2) The odometer reading at the beginning of the lease term;

(3) The price of the motor vehicle, as set forth on the Monroney label or as established by some other recognized means, as provided by rule and regulation;

(4) The make, model, and year;

(5) The number of engine cylinders;

(6) Whether the transmission is automatic or manual; and

(7) Whether the brakes and steering mechanism are power assisted or manual.

C.56:12-53 Dealer license required.

4. No dealer may lease a motor vehicle to a lessee unless the dealer is licensed pursuant to R.S.39:10-19, except that, notwithstanding the provisions of R.S.39:10-19 or any rule or regulation to the contrary, no lessor or applicant for a license to lease motor vehicles pursuant thereto shall be required to maintain a place of business with floor space available for the servicing or display of motor vehicles, nor shall an exterior sign be required at the lessor's place of business.

C.56:12-54 Violations.

5. It is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to violate any provision of this act.

C.56:12-55 Rules, regulations.

6. The director shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be needed to effectuate the purposes of this act.

C.56:12-56 Construction of act.

7. Nothing contained in this act shall be construed to preempt, deny, abrogate or impair any requirements, prohibitions, rights or remedies otherwise established by law or regulation.

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

Approved December 23, 1993.

CHAPTER 329

AN ACT providing for community residences for persons with head injuries and amending P.L.1977, c.448, P.L.1987, c.112 and P.L.1978, c.159.

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

1. Section 1 of P.L.1977, c.448 (C.30:11B-1) is amended to read as follows:

C.30:11B-1 Findings.

1. The Legislature finds that many developmentally disabled persons who are now housed in large institutions can be better cared for and given training for independent living in small community residences. Such persons have a right to the fuller, more normal life that care in such residences brings, and it is, therefore, the intention of the Legislature, through this act, to encourage the development of community residences for the developmentally disabled and to provide for the licensing and regulation of such residences by the Department of Human Services.

The Legislature further finds that there are many persons who have been hospitalized due to mental illness and are recovered to the extent that they no longer require such hospitalization, but would benefit from the specialized independent-living training available to residents of small community residences for the mentally ill. These community residences for the mentally ill may also be utilized by persons who have not been hospitalized for mental illness but who are participating in community mental health counseling or training programs provided by a State-affiliated community mental health agency. These persons have a right to the fuller, more normal life that care in community residences brings, and it is, therefore, the intention of the Legislature through this act, to encourage the development of community residences for the mentally ill and to provide for the licensing and regulation of the residences by the Department of Human Services.

In addition, the Legislature finds that many persons who have sustained head injuries which impair their cognitive, behavioral, social or physical functioning, and who are now housed in large institutions can be better cared for and given training for independent living in small community residences. These persons have a right to the fuller, more normal life that care in these residences

brings, and it is, therefore, the intention of the Legislature, through this act, to encourage the development of community residences for persons with head injuries and to provide for the licensing and regulation of these residences by the Department of Human Services.

2. Section 2 of P.L.1977, c.448 (C.30:11B-2) is amended to read as follows:

C.30:11B-2 Definitions.

2. "Community residence for the developmentally disabled" means any community residential facility housing up to 16 developmentally disabled persons which provides food, shelter and personal guidance for developmentally disabled persons who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements and hostels.

"Community residence for the mentally ill" means any community residential facility which provides food, shelter and personal guidance, under such supervision as required, to not more than 15 mentally ill persons who require assistance temporarily or permanently, in order to live independently in the community. These residences shall be approved for a purchase of service contract or an affiliation agreement pursuant to procedures established by the Division of Mental Health and Hospitals in the Department of Human Services. These residences shall not house persons who have been assigned to a State psychiatric hospital after having been found not guilty of a criminal offense by reason of insanity or unfit to be tried on a criminal charge. These residences shall not be considered health care facilities within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements, family care homes and hostels.

"Community residence for persons with head injuries" means a community residential facility providing food, shelter and personal guidance, under such supervision as required, to not more than 15 persons with head injuries, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, supervised apartment living arrangements, and hostels. Such a residence shall not be consid-

ered a health care facility within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.).

"Developmental disability" or "developmentally disabled" means a severe, chronic disability of a person which: a. is attributable to a mental or physical impairment or combination of mental or physical impairments; b. is manifest before age 22; c. is likely to continue indefinitely; d. results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and e. reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

"Mentally ill" means any psychiatric disorder which has required an individual to receive either inpatient psychiatric care or outpatient psychiatric care on an extended basis.

"Person with head injury" means a person who has sustained an injury, illness or traumatic changes to the skull, the brain contents or its coverings which results in a temporary or permanent physiological decrease of cognitive, behavioral, social or physical functioning which causes partial or total disability.

3. Section 3 of P.L.1977, c.448 (C.30:11B-3) is amended to read as follows:

C.30:11B-3 Assistance in self-care, developing potential.

3. Every community residence for the developmentally disabled, every community residence for the mentally ill and every community residence for persons with head injuries shall provide to every person admitted assistance in maintaining a basic level of self-care and in developing the potential to live independently in the community.

4. Section 10 of P.L.1987, c.112 (C.30:11B-4.2) is amended to read as follows:

C.30:11B-4.2 Program standards.

10. a. Within six months of the effective date of this act, the Director of the Division of Mental Health and Hospitals in the Department of Human Services shall develop program standards which include criteria for educational and professional experience

of employees of a community residence for the mentally ill and staffing ratios appropriate to the needs of the residents of the community residences for the mentally ill.

b. Within six months after the effective date of P.L.1993, c.329, the Commissioner of Human Services shall develop program standards which include criteria for educational and professional experience of employees of a community residence for persons with head injuries and staffing ratios appropriate to the needs of the residents of these community residences.

5. Section 5 of P.L.1977, c.448 (C.30:11B-5) is amended to read as follows:

C.30:11B-5 Geographic location.

5. The geographic location of community residences for the developmentally disabled, community residences for the mentally ill and community residences for persons with head injuries shall be monitored by the Department of Human Services. Through the granting or withholding of licenses the department shall insure that these residences are available throughout the State, without unnecessary concentration in any area.

6. Section 6 of P.L.1977, c.448 (C.30:11B-6) is amended to read as follows:

C.30:11B-6 Residents of municipality.

6. All residents of community residences for the developmentally disabled, community residences for the mentally ill and community residences for persons with head injuries in any municipality and county of the State shall be deemed residents of such municipality and county for all purposes, and shall be entitled to the use and benefit of all health, education, vocational and other facilities of such municipality and county in the same manner and extent as any other persons living in such municipality and county.

7. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to read as follows:

C.40:55D-66.1 Community residences, permitted use in residential districts.

1. Community residences for the developmentally disabled, community shelters for victims of domestic violence and community residences for persons with head injuries shall be a permitted use in all residential districts of a municipality, and the requirements there-

for shall be the same as for single family dwelling units located within such districts; provided, however, that, in the case of a community residence for the developmentally disabled, community shelter for victims of domestic violence or community residence for persons with head injuries housing more than six persons, excluding resident staff, a zoning ordinance may require for the use or conversion to use of a dwelling unit to such a community residence or shelter, a conditional use permit in accordance with section 54 of the act to which this act is a supplement (C.40:55D-67). Any requirements imposed for the issuance of a conditional use permit shall be reasonably related to the health, safety and welfare of the residents of the district; provided, however, that a municipality may deny such a permit to any proposed community residence for the developmentally disabled, community shelter for victims of domestic violence or community residence for persons with head injuries which would be located within 1500 feet of an existing such residence or shelter; provided further, however, that a municipality may deny the issuance of any additional such permits if the number of persons, other than resident staff, resident at existing such community residences or community shelters within the municipality exceeds 50 persons, or 0.5% of the population of the municipality, whichever is greater.

8. Section 2 of P.L.1978, c.159 (C.40:55D-66.2) is amended to read as follows:

C.40:55D-66.2 Definitions.

2. As used in this act: a. "community residence for the developmentally disabled" means any community residential facility licensed pursuant to P.L.1977, c.448 (C.30:11B-1 et seq.) providing food, shelter and personal guidance, under such supervision as required, to not more than 15 developmentally disabled or mentally ill persons, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, intermediate care facilities, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et al.). In the case of such a community residence housing mentally ill persons, such residence shall have been approved for a purchase of service contract or an affiliation agreement pursuant to such procedures as shall be established by regulation of the Division of Mental Health and Hospitals of the

Department of Human Services. As used in this act, “developmentally disabled person” means a person who is developmentally disabled as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), and “mentally ill person” means a person who is afflicted with a mental illness as defined in R.S.30:4-23, but shall not include a person who has been committed after having been found not guilty of a criminal offense by reason of insanity or having been found unfit to be tried on a criminal charge.

b. “Community shelter for victims of domestic violence” means any shelter approved for a purchase of service contract and certified pursuant to standards and procedures established by regulation of the Department of Human Services pursuant to P.L.1979, c.337 (C.30:14-1 et seq.), providing food, shelter, medical care, legal assistance, personal guidance, and other services to not more than 15 persons who have been victims of domestic violence, including any children of such victims, who temporarily require shelter and assistance in order to protect their physical or psychological welfare.

c. “Community residence for persons with head injuries” means a community residential facility licensed pursuant to P.L.1977, c.448 (C.30:11B-1 et seq.) providing food, shelter and personal guidance, under such supervision as required, to not more than 15 persons with head injuries, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the “Health Care Facilities Planning Act,” P.L.1971, c.136 (C.26:2H-1 et al.).

d. “Person with head injury” means a person who has sustained an injury, illness or traumatic changes to the skull, the brain contents or its coverings which results in a temporary or permanent physiobiological decrease of mental, cognitive, behavioral, social or physical functioning which causes partial or total disability.

9. This act shall take effect immediately.

Approved December 23, 1993.

CHAPTER 330

AN ACT concerning unemployment compensation benefits and lump sum pension payments and amending P.L.1980, c.13.

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

1. Section 1 of P.L.1980, c.13 (C.43:21-5a) is amended to read as follows:

C.43:21-5a Reduction by pension amount.

1. The amount of benefits payable to an individual for any week which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment which is based on the previous work of such individual shall be reduced, but not below zero, by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week; provided that such reduced weekly benefit rate shall be computed to the next lower multiple of \$1.00 if not already a multiple thereof and that any such reduction in the weekly benefit rate shall reduce the maximum total benefits of the individual during the benefit year; provided further that, if the provisions of the federal Unemployment Tax Act permit, the Commissioner of Labor may prescribe in regulations which are consistent with the federal Unemployment Tax Act either or both of the following:

a. The requirements of this section shall only apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer as determined under the chapter to which this act is a supplement;

b. The amount of any such reduction shall be determined taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment.

The amount of benefits payable to an individual who is involuntarily and permanently separated from employment prior to the date at which the individual may retire with full pension rights shall not be reduced pursuant to this section because the individual receives a lump sum payment in lieu of periodic pension, retirement or annuity payments, except that the benefits payable

to the individual may be reduced during the week in which the individual receives the lump sum payment.

2. This act shall take effect immediately and the provisions of this act shall apply to individuals who are separated from employment on or after July 1, 1992.

Approved December 23, 1993.

CHAPTER 331

AN ACT concerning penalties and interest rates for the late payment of tax liabilities, amending R.S.54:49-3, R.S.54:50-6, R.S.54:49-6, P.L.1992, c.175 and N.J.S.54A:9-7.

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

1. R.S.54:49-3 is amended to read as follows:

Interest, penalty on unpaid tax.

54:49-3. Any taxpayer who shall fail to pay any State tax on or before the day when the same shall be required by law to be paid shall pay in addition to the tax, unless otherwise provided in the law imposing such tax, interest and penalty, if any, on said tax at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year, from the date the tax was originally due until the date of actual payment. If the director is empowered by the law imposing such tax to grant an extension of time in which the tax shall be paid, the taxpayer shall be liable for the payment of interest on the unpaid tax at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year, from the date that such tax was originally due to the date of actual payment. Any amount of tax unpaid after the time when the same shall be required by law to be paid, or after an extension of time if granted, is an underpayment for the purposes of R.S.54:49-4.

2. R.S.54:50-6 is amended to read as follows:

Service of notice.

54:50-6. a. Any notice required to be given by the director pursuant to the State Tax Uniform Procedure Law, R.S.54:48-1 et

seq., may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last report filed by that person pursuant to the provisions of the State Tax Uniform Procedure Law, or of any State tax law, or if no report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. A notice may at the prescription of the director include on its face a designation which shall identify the notice for purposes of communication.

b. An assessment notice pursuant to R.S.54:49-5, R.S.54:49-6 or R.S.54:49-7 shall contain the statements required pursuant to subsections a., b. and d. of section 8 of P.L.1992, c.175 (C.54:48-6).

c. An assessment notice pursuant to R.S.54:49-5, R.S.54:49-6 or R.S.54:49-7 shall include a statement of the reason for the assessment sufficient to inform a reasonable lay person of the statutory requirements which in the opinion of the director require the assessment, the actions or omissions of the taxpayer which require the assessment, or the nature of the insufficient documentary evidence, if any, which has prompted the assessment; including:

(1) in the case of an underpayment or failure of payment, a statement of the corresponding alleged correct amount and correct date of payment; and

(2) in the case of a failure to file a return, a statement of the alleged required filing date.

d. A refund determination notice pursuant to R.S.54:49-15 shall include the statement required pursuant to subsection c. of section 8 of P.L.1992, c.175 (C.54:48-6).

e. A final determination notice pursuant to R.S.54:49-18 shall include the statements required pursuant to subsections c. and e. of section 8 of P.L.1992, c.175 (C.54:48-6).

f. The lack of any statement otherwise required to be included with a notice pursuant to this section or the lack of any description otherwise required pursuant to subsection c. of this section shall not invalidate such notice.

3. R.S.54:49-6 is amended to read as follows:

Examination of return, report; assessment of additional tax.

54:49-6. a. After a return or report is filed under the provisions of any State tax law, the director shall cause the same to be examined and may make such further audit or investigation as he may

deem necessary, and if therefrom he shall determine that there is a deficiency with respect to the payment of any tax due under such law, he shall assess the additional taxes, penalties, if any, pursuant to any State tax law or pursuant to this subtitle, and interest at the rate of three percentage points above the prime rate due the State from such taxpayer assessed for each month or fraction thereof, compounded annually at the end of each year, from the date the tax was originally due until the date of actual payment, give notice of such assessment to the taxpayer, and make demand upon him for payment.

b. No assessment of additional tax shall be made after the expiration of more than four years from the date of the filing of a return; provided, that in the case of a false or fraudulent return with intent to evade tax, or failure to file a return, the tax may be assessed at any time. If a shorter time for the assessment of additional tax is fixed by the law imposing the tax, the shorter time shall govern. If, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period. For purposes of this subsection, a return filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

4. Section 7 of P.L.1992, c.175 (C.54:49-15.1) is amended to read as follows:

C.54:49-15.1 Interest on overpayment.

7. For tax paid with respect to reports or returns due on and after the first day of the sixth month following the July 1 next following enactment of this section, interest shall be allowed and paid on every overpayment of tax at a rate determined by the director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date that such interest commences to accrue to the date of refund. Interest shall commence to accrue on the later of the date of the filing by the taxpayer of a claim for refund or requested adjustment, the date of the payment of the tax, or the due date of the report or the return thereof; but no interest shall be allowed or paid on an

overpayment of less than \$1.00, nor upon any overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later.

5. N.J.S.54A:9-7 is amended to read as follows:

Overpayment.

54A:9-7. Overpayment. (a) General. The director, within the applicable period of limitations may credit an overpayment of income tax against any liability in respect of any tax imposed by the tax law on the person who made the overpayment, and the balance shall be refunded by the comptroller out of the proceeds of the tax retained by him for such general purpose. Any refund under this section shall be made only upon the filing of a return and upon a certificate of the director approved by the comptroller. The State Treasurer, as a condition precedent to the approval of such a certificate, may examine into the facts as disclosed by the return of the person who made the overpayment and other information and data available in the files of the director.

(b) Excessive withholding. If the amount allowable as a credit for tax withheld from the taxpayer exceeds his tax to which the credit relates, the excess shall be considered an overpayment.

(c) Overpayment by employer. If there has been an overpayment of tax required to be deducted and withheld under N.J.S.54A:7-4, refund shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld by the employer.

(d) Credits against estimated tax. The director may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year. If any overpayment of income tax is so claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the declaration of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year for which the overpayment arises.

(e) Rule where no tax liability. If there is no tax liability for a period in respect of which an amount is paid as income tax, such amount shall be considered an overpayment.

(f) Under regulations prescribed by the director with approval of the State Treasurer interest shall be allowed and paid at the rate determined by the director to be equal to the prime rate pursuant to R.S.54:48-2 upon any overpayment in respect of the tax imposed by this act, determined for each month or fraction thereof, compounded annually at the end of each year, from the date that such interest commences to accrue to the date of refund; but no interest shall be allowed or paid on an overpayment of less than \$1.00, nor upon any overpayment refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later.

6. This act shall take effect immediately and sections 1, 3, 4 and 5 shall be retroactive to July 1, 1993 if enacted after that date and sections 1 and 3 shall apply to interest and penalties for failures to pay tax first due or deficiencies first assessed on and after July 1, 1993.

Approved December 23, 1993.

CHAPTER 332

AN ACT concerning certain motor vehicle offenses 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.39:4-203.5 Offenses in area of highway construction, repair.

1. a. For the purposes of this act:

“Area of highway construction or repair” means that segment of any highway which is identified by properly posted traffic control devices or signs as undergoing construction, reconstruction, repair, or maintenance operation. An area of highway construction or repair shall consist of that area between the first traffic control device or sign informing motor vehicle operators of their approaching highway construction or repair and the last traffic control device or sign indicating all restrictions are removed and normal motor vehicle operations may resume.

“Highway” means any highway under the jurisdiction of the State Department of Transportation, a county, a municipality or a toll road authority.

“Toll road authority” means the New Jersey Turnpike Authority, the New Jersey Highway Authority, or the South Jersey Transportation Authority.

b. The fine for a motor vehicle offense embodied in the following sections of statutory law, when committed in an area of highway construction or repair, shall be double the amount specified by law:

Subsection b. of R.S.39:3-20;

R.S.39:4-52;

R.S.39:4-57;

R.S.39:4-71;

R.S.39:4-80;

R.S.39:4-81;

R.S.39:4-82;

R.S.39:4-83;

R.S.39:4-84;

R.S.39:4-85;

R.S.39:4-86;

R.S.39:4-88;

R.S.39:4-89;

R.S.39:4-90;

R.S.39:4-96;

R.S.39:4-97;

R.S.39:4-98;

R.S.39:4-99;

R.S.39:4-105;

R.S.39:4-115;

R.S.39:4-119;

R.S.39:4-122;

R.S.39:4-123;

R.S.39:4-124;

R.S.39:4-125;

R.S.39:4-127;

R.S.39:4-129;

R.S.39:4-144;

P.L.1955, c.217 (C.39:5C-1);

Section 48 of P.L.1951, c.23 (C.39:4-66.1);

Section 41 of P.L.1951, c.23 (C.39:4-82.1);

Section 51 of P.L.1951, c.23 (C.39:4-90.1);

Section 5 of P.L.1951, c.264 (C.27:23-29);

Section 18 of P.L.1952, c.16 (C.27:12B-18); and
Section 21 of P.L. 1991, c.252 (C.27:25A-21).

c. (1) Signs designed in compliance with the specifications of the Department of Transportation or, if appropriate, the toll road authority having jurisdiction over the appropriate highway, shall be appropriately placed, by order of the Commissioner of Transportation, the appropriate local official, or the affected toll road authority, as the case may be, to notify drivers approaching areas of highway construction and repair that the fines are doubled for motor vehicle offenses in those areas.

(2) In addition, all traffic control signs and devices erected or displayed by the State Department of Transportation, a county, a municipality or a toll road authority within an area of highway construction or repair shall conform to the uniform system specified in the most current "Manual on Uniform Traffic Control Devices for Streets and Highways," prepared by the Federal Highway Administration in the United States Department of Transportation.

d. It shall not be a defense to the imposition of the fines authorized under the provisions of this act that a sign notifying drivers who are approaching highway construction or repair areas that fines are doubled for motor vehicle offenses in those areas was not posted, improperly posted, wrongfully removed or stolen, or that signs or devices were not placed in compliance with the most current "Manual on Uniform Traffic Control Devices for Streets and Highways" as required pursuant to paragraph (2) of subsection c. of this section.

e. The director shall include information concerning the penalties imposed pursuant to this act in any subsequent revision of the New Jersey Driver Manual and the New Jersey Motorist Guide.

2. This act shall take effect on the 60th day following enactment.

Approved December 23, 1993.

CHAPTER 333

AN ACT authorizing the township of Lebanon in the county of Hunterdon to make permanent the appointment of Chris J. Mattson to the police department of the township of Lebanon.

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

1. Pursuant to the provisions of P.L.1948, c.199 (C.1:6-10 et seq.), under which a petition for a special law has been filed with the Legislature, the township of Lebanon in the county of Hunterdon is authorized to make permanent the appointment of Chris J. Mattson as a full-time police officer, notwithstanding that his age is greater than the maximum age of appointment thereto set forth in N.J.S.40A:14-127.

2. The Board of Trustees of the Police and Firemen's Retirement System of New Jersey shall accept as a member of the retirement system any person otherwise eligible for membership, appointed pursuant to this act; provided there is paid into the retirement system, in a manner which the board shall prescribe, the contribution deemed due and payable from the date of original appointment.

3. This act shall take effect upon due adoption of an ordinance of the township of Lebanon for the purpose of adopting same.

Approved December 23, 1993.

CHAPTER 334

AN ACT authorizing the Borough of Hamburg in the county of Sussex to make permanent the appointment of Roger Titus to the police department of the Borough of Hamburg.

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

1. Pursuant to the provisions of P.L.1948, c.199 (C.1:6-10 et seq.), under which a petition for a special law has been filed with the Legislature, the Borough of Hamburg in the county of Sussex is authorized to make permanent the appointment of Roger Titus to the police department of the Borough of Hamburg, notwithstanding that his age is greater than the maximum age for appointment thereto set forth in N.J.S.40A:14-127.

2. This act shall take effect upon due adoption of an ordinance of the Borough of Hamburg for the purpose of adopting it.

Approved December 23, 1993.

CHAPTER 335

AN ACT concerning the payment of pensions 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:66-48 is amended to read as follows:

Monthly payments; payment upon death of retirant.

18A:66-48. A pension, an annuity or a retirement allowance granted under the provisions of this article shall be effective only on the first day of a month, shall be paid in equal monthly installments, and shall not be decreased, increased, revoked, or repealed, except as otherwise provided in this article; provided, however, that at the time any benefit becomes payable, any unpaid balance of a loan or arrearage outstanding shall be deducted from any benefit otherwise payable.

Upon the death of a retirant, any unpaid benefits due him shall be paid in one lump sum to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the retirant's estate. No pension, annuity or retirement allowance shall be due to a retirant or a beneficiary unless it constitutes a payment for an entire month; provided, however, that a pension, annuity or retirement allowance shall be payable for the entire month in which the retirant or beneficiary dies.

2. Section 2 of P.L.1958, c.143 (C.43:3B-2) is amended to read as follows:

C.43:3B-2 Adjustment of monthly retirement allowance, pension or survivorship benefit.

2. The monthly retirement allowance or pension originally granted to any retirant and the pension or survivorship benefit originally granted to any beneficiary shall be adjusted in accordance with the provisions of this act provided, however, that:

- a. the maximum retirement allowance, without option, shall be considered the retirement allowance originally granted to any retirant who, at retirement, elected an Option I allowance pursuant to the provisions of the statutes stipulated in subsection b. of section 1 of this act (C.43:3B-1); and b. the minimum pension

granted to any beneficiary stipulated in subsection d. (4) of section 1 of this act (C.43:3B-1), shall be considered the pension originally granted to such beneficiary.

Pension adjustments shall not be paid to retirants or beneficiaries who are not receiving their regular, full, monthly retirement allowances, pensions or survivorship benefits. The adjustment granted under the provisions of this act shall be effective only on the first day of a month, shall be paid in monthly installments, and shall not be decreased, increased, revoked or repealed except as otherwise provided in this act. No adjustment shall be due to a retirant or a beneficiary unless it constitutes a payment for an entire month; provided, however, that an adjustment shall be payable for the entire month in which the retirant or beneficiary dies.

3. Section 16 of P.L.1973, c.140 (C.43:6A-16) is amended to read as follows:

C.43:6A-16 Pensions and retirement allowances in monthly installments.

16. All pensions or retirement allowances granted under the provisions of this act shall be effective on the first day following retirement, shall be paid in equal monthly installments, except that in those instances where payment is required for a portion of a month which is not complete a pro rata payment shall be made, and shall not be decreased, increased, revoked or repealed, except as otherwise provided in this act.

Upon the death of a retirant, any unpaid benefits due him shall be paid in one lump sum to his beneficiary. No pension or retirement allowance shall be due to a retirant or a beneficiary unless it constitutes a payment for an entire month; provided, however, that a pension, annuity or retirement allowance shall be payable for the entire month in which the retirant or beneficiary dies.

4. Section 51 of P.L.1954, c.84 (C.43:15A-51) is amended to read as follows:

C.43:15A-51 Monthly payments.

51. A pension, an annuity or a retirement allowance granted under the provisions of this act shall be effective only on the first day of a month, shall be paid in equal monthly installments, and shall not be decreased, increased, revoked or repealed, except as otherwise provided in this act; provided, however, that at the time any benefit becomes payable any unpaid balance of a loan or arrearage outstanding shall be deducted from any benefit otherwise payable.

Upon the death of a retirant, any unpaid benefits due him shall be paid in one lump sum to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the retirant's estate. No pension, annuity or retirement allowance shall be due to a retirant or beneficiary unless it constitutes a payment for an entire month; provided, however, that a pension, annuity or retirement allowance shall be payable for the entire month in which the retirant or beneficiary dies.

5. Section 27 of P.L.1967, c.250 (C.43:16A-12.2) is amended to read as follows:

C.43:16A-12.2 Pension, annuity or retirement allowance effective date; amount limitations; payment of unpaid benefits upon death of retirant.

27. A pension, an annuity or a retirement allowance granted under the provisions of this act shall be effective only on the first day of a month, shall be paid in equal monthly installments, and shall not be decreased, increased, revoked or repealed, except as otherwise provided in this act; provided, however, that at the time any benefit becomes payable any unpaid balance of a loan or arrearage outstanding shall be deducted from any benefit otherwise payable.

Upon the death of a retirant, any unpaid benefits due him shall be paid in one lump sum to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the retirant's estate. No pension, annuity or retirement allowance shall be due to a retirant or beneficiary unless it constitutes a payment for an entire month; provided, however, that a pension, annuity or retirement allowance shall be payable for the entire month in which the retirant or beneficiary dies.

6. Section 20 of P.L.1965, c.89 (C.53:5A-20) is amended to read as follows:

C.53:5A-20 Payment of unpaid pension benefits.

20. Upon the death of a retirant, any unpaid pension benefits due him shall be paid in one lump sum to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the retirant's estate. No pension, annuity, or retirement allowance shall be due to a retirant or a beneficiary unless it constitutes a payment for an entire month; provided, however, that a

pension, annuity or retirement allowance shall be payable for the entire month in which the retirant or beneficiary dies.

7. This act shall take effect immediately.

Approved December 27, 1993.

CHAPTER 336

AN ACT creating a General Aviation Study Commission to study and make recommendations concerning the role of general aviation in the State's transportation system.

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

1. The Legislature finds and declares:

a. The general aviation facilities of this State are responsible for attracting upwards of \$1.5 billion into the State, employing over 8,000 people, and serving as a magnet to businesses which are attracted to the convenience of shuttling business personnel and providing business services reliant on air transportation;

b. Within the recent past, nine aviation facilities of regional significance within the State have closed, accelerating a trend that will ultimately result in an economic slowdown having far-reaching effects on the total economy of the State and the region, a result made all the more remarkable by the relative lack of awareness of the many benefits which accrue to the economy of the State through the operation of general aviation airports;

c. General aviation facilities which have been designated by the Federal Aviation Administration as reliever airports play a particularly important role in providing both general aviation uses and service to aircraft when the area's major airports are unable to do so;

d. Conflicts between municipalities and the general aviation airports located within them or adjacent thereto have occurred based on residential and other development in the vicinity of the airport and subsequent problems with the perceived incompatible uses of the airport facility;

e. The State of New Jersey acting through the Department of Transportation is given the statutory responsibility for developing, promoting and regulating aviation in the State and of preparing the New Jersey State Airport System Plan, which has recently been issued in revised form;

f. It is important for the State of New Jersey to determine the proper "mix" of private and public facilities in the area of general aviation, the feasibility of direct State intervention through outright purchase of these facilities, a "public-private" partnership for this purchase, or any other arrangement which will facilitate the preservation or expansion of the system of general aviation airports; and

g. It is in the public interest to establish a commission to study the role of general aviation in the State's transportation system, with particular reference to the function of these airports as reliever facilities, their relation to the larger transportation system, appropriate methods to preserve or expand the system of general aviation airports, including both public and private involvement.

2. There is created a 16 member commission to be known as the "General Aviation Study Commission." The membership of the commission shall consist of:

a. Four members appointed by the President of the Senate, one of whom shall be a member of the Senate, one of whom shall be a representative of a privately owned public use general aviation airport, one of whom shall be a representative of a publicly owned general aviation airport and one of whom shall be a person who has been licensed as a private pilot for more than ten years.

b. Four members appointed by the Speaker of the General Assembly, one of whom shall be a member of the General Assembly, one of whom shall be a representative of a privately owned public use general aviation airport, and one of whom shall be a representative of a publicly owned general aviation airport and one of whom shall be a member of the public.

c. The Commissioner of Transportation, the Commissioner of Commerce, Energy and Economic Development and the Executive Director of the Port Authority of New York and New Jersey, or their designees, who shall serve ex officio except that the Executive Director of the Port Authority of New York and New Jersey shall have no vote; and

d. Five public members appointed by the Governor with the advice and consent of the Senate, one of whom shall be a local government official, one of whom shall be an expert on aviation

matters, two of whom shall be members of the business community which use general aviation airports, and one of whom shall be an owner of a commercial enterprise providing aviation services to the general public.

Members who are legislators appointed by the President of the Senate or the Speaker of the General Assembly shall serve only as long as they hold the legislative seat they held at the time of their appointment.

Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made. Members shall serve without compensation, but the commission may, within the limits of funds appropriated or otherwise made available for these purposes, reimburse its members for expenses necessarily incurred in the discharge of their official duties.

Any public member of the commission may be removed by the appointing authority, for cause, after a hearing.

3. It shall be the duty of the commission to study the role of general aviation in the State's transportation system. Of particular importance in this study shall be the role of general aviation airports as reliever airports in the State's airport system, the closure of general aviation airports and ways to reverse that trend, the integration of the State's Airport System Plan with the State's general Transportation Master Plan, and the relation between municipalities in this State and the general aviation airports located in or adjacent to those municipalities. In addition, the commission shall focus on the proper "mix" of private and public facilities in the area of general aviation, the feasibility of direct State intervention through outright purchase of private facilities, a "public-private" partnership for the purchase, or any other arrangement which will facilitate the improvement of the system of general aviation airports.

4. The commission shall organize as soon as possible after the appointment of its members and shall elect a chairman and a vice-chairman from among its members. The chairman shall appoint a secretary who need not be a member of the commission.

5. The commission shall be 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 to it for its purposes. The commission shall further be entitled to employ counsel and stenographic and clerical assistance and incur traveling and other

miscellaneous expenses as it may deem necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

6. The commission may meet and hold public hearings at such place or places as it shall designate during the sessions or recesses of the Legislature and shall issue a final report of its findings and recommendations, which shall include draft legislation if the commission recommends that legislation is necessary, to the Governor and Legislature as soon as is practicable, but not more than 24 months following the organization of the commission. The commission shall dissolve upon the 30th day following the issuance of its final report.

7. The commission shall have all of the powers provided by the provisions of chapter 13 of Title 52 of the Revised Statutes.

8. This act shall take effect immediately and shall expire upon the 30th day following the issuance of the commission's final report.

Approved December 27, 1993.

CHAPTER 337

AN ACT concerning the licensure of physician assistants and amending and supplementing P.L.1991, c.378.

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

1. Section 4 of P.L.1991, c.378 (C.45:9-27.13) is amended to read as follows:

C.45:9-27.13 License requirements.

4. a. The board shall issue a license as a physician assistant to an applicant who has fulfilled the following requirements:

- (1) Is at least 18 years of age;
- (2) Is of good moral character;
- (3) Has successfully completed an approved program; and

(4) Has passed the national certifying examination administered by the National Commission on Certification of Physician Assistants, or its successor.

b. In addition to the requirements of subsection a. of this section, an applicant for renewal of a license as a physician assistant shall:

(1) Execute and submit a sworn statement made on a form provided by the board that neither the license for which renewal is sought nor any similar license or other authority issued by another jurisdiction has been revoked, suspended or not renewed; and

(2) Present satisfactory evidence that any continuing education requirements have been completed as required by this act.

c. The board, in consultation with the committee, may accept, in lieu of the examination required by paragraph (4) of subsection a. of this section, proof that an applicant for licensure holds a current license in a state which has standards substantially equivalent to those of this State.

d. The board shall issue a temporary license to an applicant who meets the requirements of paragraphs (1), (2) and (3) of subsection a. of this section and who is either waiting to take the first scheduled examination following completion of an approved program or is awaiting the results of the examination. The temporary license shall expire upon the applicant's receipt of notification of failure to pass the examination.

2. Section 9 of P.L.1991, c.378 (C.45:9-27.18) is amended to read as follows:

C.45:9-27.18 Direct supervision required.

9. a. A physician assistant and a temporary licensed physician assistant shall be under the direct supervision of a physician at all times during which the physician assistant or temporary licensed physician assistant is working in his official capacity.

b. In an inpatient setting, direct supervision of a physician assistant shall include, but not be limited to:

(1) continuing or intermittent presence with constant availability through electronic communications;

(2) regularly scheduled review of the practice of the physician assistant; and

(3) personal review by a physician of all charts and records of patients and countersignature by a physician of all medical orders, including prescribing and administering medication, within 24 hours of their entry by the physician assistant.

c. In an outpatient setting, direct supervision of a physician assistant shall include, but not be limited to:

- (1) constant availability through electronic communications;
- (2) regularly scheduled review of the practice of the physician assistant; and

(3) personal review by a physician of the charts and records of patients and countersignature by a physician of all medical orders, including administering medications, within seven days of their entry by the physician assistant.

d. In any setting, direct supervision of a temporary licensed physician assistant shall include, but not be limited to:

- (1) continuing physical presence of a physician or a licensed physician assistant;
- (2) regularly scheduled review by a physician of the practice of the temporary licensed physician assistant; and
- (3) personal review by a physician of all charts and records of patients within 24 hours of an entry by the temporary licensed physician assistant.

C.45:9-27.19a Countersignature required for order for medications by temporary licensee.

3. A temporary licensed physician assistant may write an order for medications; however, the order may not be executed without the immediate countersignature of a physician or licensed physician assistant. When the countersignature is provided by a licensed physician assistant, the order must also be countersigned by a physician within 24 hours of its entry by the temporary licensed physician assistant. Any limitation on the authority of a temporary licensed physician assistant to order medications as provided in this section shall be in addition to any such limitation on a licensed physician assistant pursuant to the "Physician Assistant Licensing Act," P.L.1991, c.378 (C.45:9-27.10 et al.).

4. This act shall take effect immediately.

Approved December 27, 1993.

CHAPTER 338

AN ACT concerning exemptions from certain taxes and amending
P.L.1945, c.162.

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

1. Section 3 of P.L.1945, c.162 (C.54:10A-3) is amended to read as follows:

C.54:10A-3 Corporations exempt.

3. The following corporations shall be exempt from the tax imposed by this act:

(a) Corporations subject to a tax assessed upon the basis of gross receipts, or insurance premiums collected;

(b) Corporations which operate regular route autobus service within this State under operating authority conferred pursuant to R.S.48:4-3, provided, however, that such corporations shall not be exempt from the tax on net income imposed by section 5(c) of P.L.1945, c.162 (C.54:10A-5);

(c) Railroad, canal corporations, savings banks, production credit associations organized under the Farm Credit Act of 1933, agricultural cooperative associations incorporated or domesticated under or subject to chapter 13 of Title 4 of the Revised Statutes and exempt under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal Internal Revenue Code (26 U.S.C. §521), or building and loan or savings and loan associations;

(d) Cemetery corporations not conducted for pecuniary profit or any private shareholder or individual;

(e) Nonprofit corporations, associations or organizations established, organized or chartered, without capital stock, under the provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of the New Jersey Statutes or under a special charter or under any similar general or special law of this or any other State, and not conducted for pecuniary profit of any private shareholders or individual;

(f) Corporations subject to a tax under the provisions of P.L.1940, c.4 (C.54:30A-16 et seq.), P.L.1940, c.5 (C.54:30A-49 et seq.), or P.L.1991, c.184 (C.54:30A-18.6 et al.) or any statute or law imposing a similar tax or taxes;

(g) Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under federal law by tenants, provided, however, that the exemption hereunder shall continue only so long as the corporations remain subject to rules and regulations of the Federal Housing Authority and the Commissioner of the Federal Housing Authority holds membership certificates in the corpora-

tions and the corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat. 1246) as amended by subsequent Acts of Congress. In order to be exempted under this subsection, corporations shall annually file a report on or before August 15 with the commissioner, in the form required by the commissioner, to claim such exemption, and shall pay a filing fee of \$25.00;

(h) Corporations not for profit organized under any law of this State where the primary purpose thereof is to provide for its shareholders or members housing in a retirement community as same as defined under the provisions of the "Retirement Community Full Disclosure Act," P.L.1969, c.215 (C.45:22A-1 et seq.); and

(i) Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State.

2. This act shall take effect immediately, and shall apply to fiscal or calendar accounting years commencing after December 31, 1960.

Approved December 27, 1993.

CHAPTER 339

AN ACT establishing the State Transfer of Development Rights Bank, supplementing chapter 1C of Title 4 of the Revised Statutes, amending P.L.1989, c.86 and making an appropriation.

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

C.4:1C-49 Short title.

1. This act shall be known and may be cited as the "State Transfer of Development Rights Bank Act."

C.4:1C-50 Definitions.

2. As used in this act:

"Board" means the board of directors of the State Transfer of Development Rights Bank established pursuant to section 3 of this act;

“Development potential” means the maximum number of dwelling units or square feet of nonresidential floor area that may be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance, and in accordance with recognized environmental constraints;

“Development transfer” means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance adopted pursuant to law;

“Instrument” means the easement, credit, or other deed restriction used to record a development transfer;

“State Transfer of Development Rights Bank,” “bank” or “State TDR Bank” means the bank established pursuant to section 3 of this act, and shall constitute the development potential transfer bank for the purposes of P.L.1989, c.183.

C.4:1C-51 State Transfer of Development Rights Bank established.

3. a. There is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the State Transfer of Development Rights Bank. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the bank is allocated within the office of the State Agriculture Development Committee within the Department of Agriculture, but notwithstanding that allocation, the bank shall be independent of any supervision or control by the committee or the department or by any officer or employee thereof, except as otherwise expressly provided in this act. The bank is constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the bank of the powers conferred by this act is deemed to be an essential governmental function of the State.

b. (1) The bank shall be governed by a board of directors consisting of ten voting members, or the designees thereof, as follows: the Secretary of Agriculture, who shall serve as chairperson and who shall vote only in the event there is a tie vote; the State Treasurer; the Commissioner of Environmental Protection; the Commissioner of Transportation; the Commissioner of Banking; the Commissioner of Community Affairs; the President of the State Board of Agriculture; the Chairman of the State Planning Commission; the President of the Association of New Jersey

Environmental Commissions; and one member of the general public, who shall be a farmer actively engaged in agriculture in New Jersey and who shall be appointed by the Governor, with the advice and consent of the Senate.

(2) All members of the board, except the member of the general public, shall serve ex officio. The term of the member of the general public shall be for four years, with reappointment possible for a second term only.

(3) A majority of the membership of the board shall constitute a quorum except that no action may be taken by the board except upon the affirmative vote of a majority of the total membership of the board. Designees of the nine ex officio members shall have the power to vote in the absence of members.

c. (1) Upon request of the board, the State Agriculture Development Committee shall provide that appropriate staff be made available to assist and advise the board in performing its functions, duties, and responsibilities pursuant to this act.

(2) Officials of State agencies serving on the board shall, to the maximum extent practicable and without remuneration from the board, avail the board of the expertise of their agencies in the areas of land use and planning, banking, law, agriculture, natural resource protection, historic site preservation, and other areas of expertise required by the board to adequately address the broader public and planning purposes of transfer of development rights and of the State Transfer of Development Rights Bank.

(3) Funding necessary to provide the board with direct staff assistance or professional services that cannot be made available through existing State agency staff as provided in this subsection shall be made available as provided for pursuant to section 8 of this act.

C.4:1C-52 Powers of board.

4. The board shall have the following powers:

a. To purchase, or to provide matching funds for the purchase of 80% of, the value of development potential and to otherwise facilitate development transfers, from the owner of record of the property from which the development potential is to be transferred or from any person, or entity, public or private, holding the interest in development potential that is subject to development transfer; provided that, in the case of providing matching funds for the purchase of 80% of the value of development potential, the remaining 20% of that value is contributed by the affected municipality or county, or both, after public notice thereof in the

New Jersey Register and in one newspaper of general circulation in the area affected by the purchase. The remaining 20% of the value of the development potential to be contributed by the affected municipality or county, or both, to match funds provided by the board, may be obtained by purchase from, or donation by, the owner of record of the property from which the development potential is to be transferred or from any person, or entity, public or private, holding the interest in development potential that is subject to development transfer. The value of development potential may be determined by either appraisal, municipal averaging based upon appraisal data, or by a formula supported by appraisal data. The board may also engage in development transfer by sale, exchange, or other method of conveyance, provided that in doing so, the board shall not substantially impair the private sale, exchange or other method of conveyance of development potential. The board may not, nor shall anything in this act be construed as permitting the board to, engage in development transfer from one municipality to another, which transfer is not in accordance with the ordinances of both municipalities;

b. To adopt and, from time to time, amend or repeal suitable bylaws for the management of its affairs;

c. To adopt and use an official seal and alter that seal at its pleasure;

d. To apply for, receive, and accept, from any federal, State, or other public or private source, grants or loans for, or in aid of, the board's authorized purposes;

e. To enter into any agreement or contract, execute any legal document, and perform any act or thing necessary, convenient, or desirable for the purposes of the board or to carry out any power expressly given in this act;

f. To 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;

g. To call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, commission, or agency as may be required and made available for these purposes;

h. To retain such staff as may be necessary in the career service and to appoint an executive director thereof. The executive director shall serve as a member of the senior executive or unclassified service and may be appointed without regard to the provisions of Title 11A of the New Jersey Statutes;

i. To review and analyze innovative techniques that may be employed to maximize the total acreage reserved through the use of perpetual easements;

j. To provide, through the State TDR Bank, a financial guarantee with respect to any loan to be extended to any person that is secured using development potential as collateral for the loan. Financial guarantees provided under this act shall be in accordance with procedures, terms and conditions, and requirements, including rights and obligations of the parties in the event of default on any loan secured in whole or in part using development potential as collateral, to be established by rule or regulation adopted by the board pursuant to the "Administrative Procedure Act";

k. To enter into agreement with the State Agriculture Development Committee for the purpose of acquiring development potential through the acquisition of development easements on farmland so that the board may utilize the existing processes, procedures, and capabilities of the State Agriculture Development Committee as necessary and appropriate to accomplish the goals and objectives of the board as provided for pursuant to this act;

l. To enter into agreements with other State agencies or entities providing services and programs authorized by law so that the board may utilize the existing processes, procedures, and capabilities of those other agencies or entities as necessary and appropriate to accomplish the goals and objectives of the board as provided for pursuant to this act; and

m. To provide planning assistance grants to municipalities that have adopted viable development transfer ordinances, as determined by the board, for up to 50% of the cost of planning associated with such an ordinance and incurred by a municipality, or \$10,000, whichever is less, which grants shall be made utilizing moneys deposited into the bank pursuant to section 8 of this act.

C.4:1C-53 Establishment, maintenance of Development Potential Transfer Registry.

5. a. The board shall establish and maintain a Development Potential Transfer Registry, which shall include:

(1) The name and address of every person to whom and from whom development potential is sold or otherwise conveyed, the date of the conveyance, and the consideration, if any, received therefor;

(2) The name and address of any person who has utilized development potential, the location of the land to which and from

which the development potential was transferred, and the date this transfer was made; and

(3) An annual enumeration of the total number of development transfers, listing the municipality or municipalities involved in the transfer and the instrument of transfer.

b. No person shall purchase or otherwise acquire, encumber, or utilize any development potential without recording that fact, within 10 business days thereof, with the bank.

c. The board shall make available (1) in the form of an annual report the information included in the registry to the county and each municipality that has adopted a development transfer ordinance, and (2) upon request, pertinent information to any other person. The first annual report shall be submitted to the Governor and Legislature and shall be made available to the public on the first anniversary of the effective date of this act.

C.4:1C-54 Sale, exchange, conveyance of development potential.

6. a. The board may sell by negotiation or auction, exchange, or otherwise convey any development potential that is purchased or otherwise acquired pursuant to the provisions of this act, after notice thereof placed in the New Jersey Register and in one newspaper of general circulation in the area affected by the conveyance. All sales, exchanges, or conveyances shall be made prior to the expiration of the bank. The provisions of any other law to the contrary notwithstanding, no such sale, exchange, or conveyance shall be subject to approval of the State House Commission or the General Services Administration in the Department of the Treasury.

b. When the board sells, exchanges, or otherwise conveys development potential, it shall remit 20% of the proceeds to the local government unit that participated in its acquisition unless the local government unit obtained its interest in the development potential by donation and retain the remaining balance.

c. When the board sells, exchanges, otherwise conveys, purchases or otherwise acquires development potential, it shall do so in a manner that shall not substantially impair the private sale and transfer thereof. The board may convey development potential without remuneration for use in projects that satisfy a compelling public purpose only by an affirmative vote of two-thirds of its members and approval by the local government unit that provided 20% of the cost of the acquisition of the development potential.

d. Governmental entities that provide municipal or county funding to finance the purchase of development potential prior to the

operation of the State TDR Bank shall receive priority consideration by the State TDR Bank in the purchase of development potential.

e. Prior to the sale, exchange or conveyance of any development potential purchased or otherwise acquired using moneys derived from bonds authorized by the "Farmland Preservation Bond Act of 1981," P.L.1981, c.276, as amended by P.L.1987, c.240 or the "Open Space Preservation Bond Act of 1989," P.L.1989 c.183, the State TDR Bank shall obtain a determination from the State Treasurer that such sale, exchange or conveyance will not adversely affect the tax-exempt status of such bonds.

C.4:1C-55 Report to Governor, Legislature.

7. The board, three years after the effective date of this act, shall prepare and submit a report to the Governor and Legislature assessing the implementation of this act, evaluating the operation of the State TDR Bank, providing a financial accounting and summary of any expenditures or disbursements made pursuant to this act, and making any recommendations for appropriate legislative or administrative action necessary to further the purposes of this act.

8. a. There is appropriated to the State Transfer of Development Rights Bank from the "1989 Development Potential Transfer Bank Fund" established pursuant to section 23 of P.L.1989, c.183, the sum of \$20,000,000 for deposit into the State TDR Bank, which shall be expended in accordance with the provisions of this act.

b. Of the moneys appropriated pursuant to subsection a. of this section, not more than \$400,000 may be expended in total for administrative costs, staff assistance or professional services within the period of four years from the effective date of this act, and not more than \$400,000 may be expended for the purposes of subsection m. of section 4 of this act.

9. Section 14 of P.L.1989, c.86 (C.40:55D-126) is amended to read as follows:

C.40:55D-126 Sale of development potential.

14. If the governing body of Burlington County provides for the acquisition of a development easement under the provisions of P.L.1983, c.32 (C.4:1C-11 et al.), it may sell the development potential associated with the development easement subject to the terms and conditions of the development transfer ordinance adopted pursuant to this act; provided that if the development easement was purchased using moneys provided under the "Farm-

land Preservation Bond Act of 1981," P.L.1981, c.276, a percentage of all revenues generated through the resale of the development potential shall be refunded to the State in an amount equal to the State's percentage contribution to the original development easement purchase. Notwithstanding the foregoing, such refund shall not be paid to the State in the event the State Treasurer determines that such refund would adversely affect the tax-exempt status of any bonds authorized pursuant to the "Farmland Preservation Bond Act of 1981," P.L.1981, c.276. This repayment shall be made within 90 days after the end of the calendar year in which the sale occurs.

10. This act shall take effect immediately.

Approved December 27, 1993.

CHAPTER 340

AN ACT to license professional counselors and associate counselors and amending and supplementing Chapter 8B of Title 45 of the Revised Statutes.

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

C.45:8B-34 Short title.

1. This act shall be known and may be cited as the "Professional Counselor Licensing Act."

C.45:8B-35 Determinations.

2. The profession of counseling in the State of New Jersey is determined to affect the public safety and welfare, and to be subject to regulation and control in the public interest in order to protect the public by setting standards of qualification, education, training, and experience for those persons seeking to practice and be licensed as professional counselors and associate counselors.

C.45:8B-36 Definitions.

3. As used in this act:

"Board" means the State Board of Marriage Counselor Examiners.

"Committee" means the Professional Counselor Examiners Committee.

“Counseling” means offering to assist or assisting, for a fee or other compensation, an individual or group through a counseling relationship to develop an understanding of interpersonal and intrapersonal problems and to plan and act on a course of action to restore optimal functioning to that individual or group.

“Counseling specialty” means a field of specialization in which counseling takes place and which has been designated as a counseling specialty by the committee.

“Licensed associate counselor” means an individual who holds a current, valid license as a licensed associate counselor pursuant to this act and who practices counseling under the direct supervision of a licensed professional counselor.

“Licensed professional counselor” means an individual who holds a current, valid license as a licensed professional counselor pursuant to this act.

C.45:8B-37 Professional Counselor Examiners Committee.

4. There is established a committee of the board to be known as the Professional Counselor Examiners Committee. The committee shall consist of five residents of this State, four of whom shall be licensed professional counselors engaged primarily in the practice of counseling and one of whom shall be a licensed professional counselor engaged primarily in teaching, training or research in counseling.

The members of the committee shall be appointed by the Governor for terms of three years, except that the terms of the first five members of the committee shall be as follows: one member for a term of one year, two members for a term of two years, and two members for a term of three years. A member of the committee shall not be eligible to succeed himself more than once. Vacancies shall be filled for the unexpired term in the manner provided by the original appointment. The Governor may remove any member of the board for cause, upon notice and opportunity to be heard.

The first appointees shall become licensed as soon as practicable after their appointments.

Members of the committee shall receive no compensation for their services, but may be reimbursed for all necessary expenses incidental to performance of their duties as members of the committee.

The committee shall annually elect from its members a chairperson and a vice-chairperson.

Regular meetings of the committee shall be held at least once during each quarter of the year and special meetings may be held upon the call of the chairperson or the vice-chairperson in the

chairperson's absence. Three members of the committee shall constitute a quorum and no action shall be taken at a meeting without at least three votes in accord.

C.45:8B-38 Powers, duties of committee.

5. The committee is authorized to: administer examinations required pursuant to this act; review the content and duration of courses of study offered by colleges and universities for degrees in counseling, and to establish and maintain a register of colleges and universities whose curricula in counseling are approved by the committee or an accrediting body acceptable to the committee; establish and maintain a list of recognized subjects and courses of study; and establish minimum requirements therefor which shall be acceptable to the board and the committee.

In addition to those records of proceedings and applicants established by the board, the committee shall keep a record of its proceedings and a record of all applicants for licensure, showing for each whether the application is for a license as a licensed professional counselor or licensed associate counselor or a counseling specialty, the date of application, name, age, education, and other qualifications, place of practice and place of residence, and whether the applicant was rejected or a license or specialty granted, and the date of that action.

C.45:8B-39 License required.

6. No person shall engage in the practice of counseling as a licensed professional counselor or licensed associate counselor or represent or hold himself out as a licensed professional counselor or licensed associate counselor unless licensed pursuant to this act.

C.45:8B-40 Requirements, application for licensure as professional counselor.

7. Each person applying for licensure as a licensed professional counselor shall make application therefor to the board on the form and in the manner the committee prescribes and the board shall immediately refer each application to the committee for appropriate action. Each applicant shall furnish evidence satisfactory to the committee that he:

- a. Is at least 18 years of age;
- b. Has completed a minimum of 60 graduate semester hours in a planned educational program, which includes a master's degree or doctorate in counseling from a regionally accredited institution of higher education, of which 45 graduate semester hours are distributed in at least eight of the following areas:

- (1) Counseling theory and practice;

- (2) The helping relationship;
- (3) Human growth and development and maladaptive behavior;
- (4) Lifestyle and career development;
- (5) Group dynamics, processes, counseling, and consulting;
- (6) Appraisal of individuals;
- (7) Social and cultural foundations;
- (8) Research and evaluation;
- (9) The counseling profession;

c. Has had at least three years of supervised full-time counseling experience in a professional counseling setting acceptable to the committee, one year of which may be obtained prior to the granting of the master's degree. The committee shall establish criteria for determining the qualifications and status which may constitute supervised counseling experience. An applicant may eliminate one year of the required supervised counseling experience by substituting 30 graduate semester hours beyond the master's degree if those graduate semester hours are clearly related to counseling and are acceptable to the committee. In no case, however, may the applicant have less than one year of supervised professional counseling experience after the granting of the master's degree; and

d. Has passed the National Certified Counselor Examination.

C.45:8B-41 Requirements, application for licensure as associate counselor.

8. Each person applying for licensure as a licensed associate counselor shall make application therefor to the board on the form and in the manner the committee prescribes and the board shall immediately refer each application to the committee for appropriate action. Each applicant shall furnish evidence satisfactory to the committee that he:

- a. Is at least 18 years of age;
- b. Has completed a minimum of 60 graduate semester hours in a planned educational program, which includes a master's degree or doctorate in counseling from a regionally accredited institution of higher education, of which 45 graduate semester hours are distributed in at least eight of the following areas:

- (1) Counseling theory and practice;
- (2) The helping relationship;
- (3) Human growth and development and maladaptive behavior;
- (4) Lifestyle and career development;
- (5) Group dynamics, processes, counseling, and consulting;
- (6) Appraisal of individuals;
- (7) Social and cultural foundations;

- (8) Research and evaluation;
- (9) The counseling profession; and
- c. Has passed an examination approved by the committee.

C.45:8B-42 Review by committee of applicants.

9. The committee shall review the qualifications of each person who applies for licensure. No applicant shall be licensed by the board unless a majority of the full committee first determines that the applicant has met the education and experience requirements and performed satisfactorily on the appropriate examination required pursuant to this act. All applicants who are determined to be qualified and are recommended for licensure by the committee shall be considered for licensure by the board. Licenses shall be issued for a period of two years and may be renewed biennially.

The committee is authorized to make recommendations to the board with the final decisions to be made by the board. The board is authorized to review the actions taken by the committee with respect to the committee's evaluation and examination of applicants for licensure as licensed professional counselors or licensed associate counselors but the board may reverse, modify or fail to implement any determination by the committee with an affirmative vote of a majority of the board.

C.45:8B-43 Addition of professional specialty designation to credentials.

10. A professional specialty designation may be added by the board to the licensed professional counselor's credentials issued by the board upon demonstration to the committee that the applicant has met the recognized minimum standards as established by the National Board of Certified Counselors. A licensed professional counselor shall not claim or advertise a counseling specialty and shall not incorporate the specialty designation into his professional title unless the qualifications of that specialty have been met as determined by the committee and the licensed professional counselor's competence in the specialty as approved by the National Board of Certified Counselors.

C.45:8B-44 Clinical mental health counselor.

11. a. The board shall grant to any licensed professional counselor who has satisfied the requirements of this section, the professional specialty designation of clinical mental health counselor. A licensed professional counselor with the designation of clinical mental health counselor shall be authorized to provide counseling services that include, but are not limited to, the preliminary diagnosis of mental and emotional disorders,

psychoeducational techniques aimed at the prevention of these disorders, consultations, and clinical research into more effective treatment modalities.

b. Each applicant for the designation of clinical mental health counselor shall furnish evidence satisfactory to the committee that the following requirements have been met:

(1) Certification by the Academy of Certified Clinical Mental Health Counselors, or any successor thereto; passage of a comprehensive qualifying examination prepared by the Academy; evidence satisfactory to the committee that the clinical mental health counselor has satisfied the continuing education requirements of the committee; and, evidence satisfactory to the committee that certification of the clinical mental health counselor has been renewed by the Academy;

(2) 60 credit hours in a mental health field at an accredited institution of higher education; and

(3) Two years of post-master's degree field experience, which includes at least 3,000 hours of supervised clinical experience and 100 hours of face-to-face supervision.

C.45:8B-45 Renewal of license, continuing education.

12. Each applicant shall present satisfactory evidence when seeking license renewal that in the period since the license was issued or last renewed any continuing education requirements have been completed as specified by the committee.

C.45:8B-46 Granting of license to practitioner licensed, certified out-of-State.

13. The board may grant a license to practice counseling to any person who at the time of application is licensed or certified by an agency located in another state, territory or jurisdiction, if in the opinion of the committee the requirements of that licensure or certification are substantially similar to the requirements of this act.

C.45:8B-47 Fees.

14. The board may establish, change and collect application fees, renewal fees, examination fees, and any other fees for services required to be performed by the committee or the board pursuant to this act.

C.45:8B-48 Construction of act.

15. Nothing in this act shall be construed to apply to:

a. The activities and services of qualified members of other professions, including physicians, psychologists, registered nurses, marriage counselors, attorneys, social workers or any

other professionals licensed by the State, when acting within the scope of their profession and doing work of a nature consistent with their training, provided they do not hold themselves out to the public as possessing a license issued pursuant to this act or represent themselves by any professional title regulated by this act.

b. The activities, services and use of an official title on the part of a person employed as a counselor by any federal, State, county, or municipal agency; or public or private educational institution, but only when these persons are performing counseling or counseling-related activities within the scope of their employment.

c. The activities and services of a student, intern or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study, and if the person is clearly designated a "Counselor intern."

d. The activities and services in this State of a nonresident person rendered on not more than 30 days during any calendar year, if that person is duly authorized to perform those activities and services under the laws of his residence.

e. The activities and services of a rabbi, priest, minister, Christian Science practitioner or clergyman of any religious denomination or sect, if those activities and services are within the scope of the performance of his regular or specialized ministerial duties and for which no separate charge is made, or when these activities are performed with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect, and when the person rendering the service remains accountable to the established authority thereof.

f. The activities, services, titles and descriptions of persons employed as professionals or volunteers in the practice of counseling for public or private nonprofit organizations or charities.

g. The activities and services of persons employed as peer counselors in organizations devoted to prevention of alcoholism, drug abuse, or relief of emotional effects of rape or other crimes, and telephone "hotline" organizations.

C.45:8B-49 Confidentiality of communications.

16. Any communication between a licensed professional counselor or licensed associate counselor and the person or persons counseled while performing counseling shall be confidential and

its secrecy preserved. This privilege shall not be subject to waiver, except when disclosure is required by State law or when the licensed professional counselor or licensed associate counselor is a party defendant to a civil, criminal or disciplinary action arising from that counseling, in which case the waiver of the privilege accorded by this section shall be limited to that action.

C.45:8B-50 Supervision for associate counselor required.

17. No licensed associate counselor shall practice without direct supervision by a licensed professional counselor. The plan for supervision of the licensed associate counselor shall be approved by the committee prior to any actual performance of counseling by the licensed associate counselor.

18. Section 9 of P.L.1968, c.401 (C.45:8B-9) is amended to read as follows:

C.45:8B-9 State board of marriage counselor examiners; membership.

9. There is hereby created in the Division of Consumer Affairs of the Department of Law and Public Safety, the State Board of Marriage Counselor Examiners, which shall consist of nine members, who are residents of this State and citizens of the United States, five of whom shall be licensed practicing marriage counselors, one of whom shall be a licensed professional counselor currently serving on the Professional Counselor Examiners Committee, and 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.).

19. Section 10 of P.L.1968, c.401 (C.45:8B-10) is amended to read as follows:

C.45:8B-10 Qualifications of members.

10. Each member of the board, except the public members, the State executive department member and the licensed professional counselor, shall have the following qualifications:

(a) He shall either be a member of or have professional standing equivalent to that required for classification as a member of the New Jersey Association of Marriage Counselors and the American Association of Marriage Counselors.

(b) He shall be at the time of his appointment, and shall have been for at least five years prior thereto, actively engaged as a marriage counselor in rendering professional services in marriage

counseling, or in the education and training of doctoral or post-doctoral students of marriage counseling or in marriage counseling research, and shall have spent the major portion of the time devoted by him to such activity, during the two years preceding his appointment, in this State.

(c) He shall hold at least a master's degree in social work, marriage or pastoral counseling, psychology, sociology of the family, marriage and family life education, or in a closely allied field or a doctor of medicine; from a recognized educational institution.

20. This act shall take effect immediately but shall remain inoperative for 180 days and this act shall expire if any licensed professional counselor or licensed associate counselor or any group thereof, either directly or indirectly, attempts, by any means, to secure mandatory reimbursement by insurers of their services by law, regulation or other means in this State.

Approved December 27, 1993.

CHAPTER 341

AN ACT concerning certain vacancies on local governing bodies and amending N.J.S.40A:16-15.

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

1. N.J.S.40A:16-15 is amended to read as follows:

Appointment pending election when person elected to office dies before commencement of term.

40A:16-15. If at any time after an election for the office of mayor or for a member of the governing body and before the time fixed for the commencement of the term of the office, the person elected to that office dies, the municipal committee of the political party of which the person elected was the nominee shall appoint another person to fill the position until the next regular municipal election. If the person elected was not the nominee of a political party, on or within 30 days after the time fixed for the commencement of the term of office, the governing body shall

appoint a successor to fill the office until the next regular municipal election without regard to party.

2. This act shall take effect immediately.

Approved December 27, 1993.

CHAPTER 342

AN ACT concerning eviction of residential tenants and relocation assistance and amending and supplementing P.L.1974, c.49.

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

1. Section 2 of P.L.1974, c.49 (C.2A:18-61.1) is amended to read as follows:

C.2A:18-61.1 Grounds for removal of tenants.

2. No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than (1) owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant; (2) a dwelling unit which is held in trust on behalf of a member of the immediate family of the person or persons establishing the trust, provided that the member of the immediate family on whose behalf the trust is established permanently occupies the unit; and (3) a dwelling unit which is permanently occupied by a member of the immediate family of the owner of that unit, provided, however, that exception (2) or (3) shall apply only in cases in which the member of the immediate family has a developmental disability, except upon establishment of one of the following grounds as good cause:

a. The person fails to pay rent due and owing under the lease whether the same be oral or written.

b. The person has continued to be, after written notice to cease, so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood.

c. The person has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises.

d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term.

e. The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term.

f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases.

g. The landlord or owner (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations; (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of eviction pursuant to this clause, the landlord shall notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence; (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors or zoning officers and it is unfeasible to correct such illegal occupancy without removing the tenant; or (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area. In those cases where the tenant is being removed for any reason specified in this subsection, no warrant for possession shall be issued until P.L.1967, c.79 (C.52:31B-1 et seq.) and P.L.1971, c.362 (C.20:4-1 et seq.) have been complied with.

h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a

mobile home park, provided this subsection shall not apply to circumstances covered under subsection g. of this section.

i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept; provided that in cases where a tenant has received a notice of termination pursuant to subsection g. of section 3 of P.L.1974, c.49 (C.2A:18-61.2), or has a protected tenancy status pursuant to section 9 of the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.30), or pursuant to the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), the landlord or owner shall have the burden of proving that any change in the terms and conditions of the lease, rental or regulations both is reasonable and does not substantially reduce the rights and privileges to which the tenant was entitled prior to the conversion.

j. The person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing.

k. The landlord or owner of the building or mobile home park is converting from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites, except as hereinafter provided in subsection l. of this section. Where the tenant is being removed pursuant to this subsection, no warrant for possession shall be issued until this act has been complied with. No action for possession shall be brought pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c.226 (C.2A:18-61.22 et al.), or against a qualified tenant under the "Tenant Protection Act of 1992," P.L.1991, c.509 (C.2A:18-61.40 et al.), as long as the agency has not terminated the protected tenancy status or the protected tenancy period has not expired.

l. (1) The owner of a building or mobile home park, which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant or sublessee whose initial tenancy began after the master deed, agreement establishing the cooperative or subdivision plat was recorded, because the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing. However, no action shall be brought against a tenant under paragraph (1) of this sub-

section unless the tenant was given a statement in accordance with section 6 of P.L.1975, c.311 (C.2A:18-61.9);

(2) The owner of three or less condominium or cooperative units seeks to evict a tenant whose initial tenancy began by rental from an owner of three or less units after the master deed or agreement establishing the cooperative was recorded, because the owner seeks to personally occupy the unit, or has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing;

(3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing.

m. The landlord or owner conditioned the tenancy upon and in consideration for the tenant's employment by the landlord or owner as superintendent, janitor or in some other capacity and such employment is being terminated.

n. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under 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 within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing, a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors therein a person who has been so convicted or has so pleaded, or otherwise permits such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person who harbors or permits a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said act.

o. The person has been convicted of or pleaded guilty to, or if a juvenile, has been adjudicated delinquent on the basis of an act which if committed by an adult would constitute an offense under

N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault, or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord; or, being the tenant or lessee of such leased premises, knowingly harbors therein a person who has been so convicted or has so pleaded, or otherwise permits such a person to occupy those premises for residential purposes, whether continuously or intermittently.

p. The person has been found, by a preponderance of the evidence, liable in a civil action for removal commenced under this act for an offense under N.J.S.2C:12-1 or N.J.S.2C:12-3 involving assault or terroristic threats against the landlord, a member of the landlord's family or an employee of the landlord, or under 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 within the meaning of that act within or upon the leased premises or the building or complex of buildings and land appurtenant thereto, or the mobile home park, in which those premises are located, and has not in connection with his sentence for that offense either (1) successfully completed or (2) been admitted to and continued upon probation while completing a drug rehabilitation program pursuant to N.J.S.2C:35-14; or, being the tenant or lessee of such leased premises, knowingly harbors therein a person who committed such an offense, or otherwise permits such a person to occupy those premises for residential purposes, whether continuously or intermittently, except that this subsection shall not apply to a person who harbors or permits a juvenile to occupy the premises if the juvenile has been adjudicated delinquent upon the basis of an act which if committed by an adult would constitute the offense of use or possession under the said "Comprehensive Drug Reform Act of 1987."

For purposes of this section, (1) "developmental disability" means any disability which is defined as such pursuant to section 3 of P.L.1977, c.82 (C.30:6D-3); (2) "member of the immediate family" means a person's spouse, parent, child or sibling, or a spouse, parent, child or sibling of any of them; and (3) "permanently" occupies or occupied means that the occupant maintains no other domicile at which the occupant votes, pays rent or property taxes or at which rent or property taxes are paid on the occupant's behalf.

2. Section 4 of P.L.1974, c.49 (C.2A:18-61.3) is amended to read as follows:

C.2A:18-61.3 Causes for eviction or nonrenewal of lease.

4. a. No landlord may evict or fail to renew any lease of any premises covered by section 2 of this act except for good cause as defined in section 2.

b. A person who was a tenant of a landlord in premises covered by section 2 of P.L.1974, c.49 (C.2A:18-61.1) may not be removed by any order or judgment for possession from the premises by the owner's or landlord's successor in ownership or possession except:

(1) For good cause in accordance with the requirements which apply to premises covered pursuant to P.L.1974, c.49 (C.2A:18-61.1 et al.); or

(2) For proceedings in premises where federal law supersedes applicable State law governing removal of occupants; or

(3) For proceedings where removal of occupants is sought by an authorized State or local agency pursuant to eminent domain or code or zoning enforcement laws and which comply with applicable relocation laws pursuant to the "Relocation Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et seq.), the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) or section 3 of P.L.1993, c.342 (C.2A:18-61.1g).

Where the owner's or landlord's successor in ownership or possession is not bound by the lease entered into with the former tenant and may offer a different lease to the former tenant, nothing in P.L.1986, c.138 shall limit that right.

C.2A:18-61.1g Relocation of displaced tenant.

3. a. A municipality may enact an ordinance providing that any tenant who receives a notice of eviction pursuant to section 3 of P.L.1974, c.49 (C.2A:18-61.2) that results from zoning or code enforcement activity for an illegal occupancy, as set forth in paragraph (3) of subsection g. of section 2 of P.L.1974, c.49 (C.2A:18-61.1), shall be considered a displaced person and shall be entitled to relocation assistance in an amount equal to six times the monthly rental paid by the displaced person. The owner of the structure shall be liable for the payment of relocation assistance pursuant to this section.

b. A municipality that has enacted an ordinance pursuant to subsection a. of this section may pay relocation assistance to any displaced person who has not received the required payment from the owner of the structure at the time of eviction pursuant to subsection a. of this section from a revolving relocation assistance fund established pursuant to section 2 of P.L.1987, c.98 (C.20:4-4.1a). All relocation assistance costs incurred by a municipality

pursuant to this subsection shall be repaid by the owner of the structure to the municipality in the same manner as relocation costs are billed and collected under section 1 of P.L.1983, c.536 (C.20:4-4.1) and section 1 of P.L.1984, c.30 (C.20:4-4.2). These repayments shall be deposited into the municipality's revolving relocation assistance fund.

c. A municipality that has enacted an ordinance pursuant to subsection a. of this section, in addition to requiring reimbursement from the owner of the structure for relocation assistance paid to a displaced tenant, may require that an additional fine for zoning or housing code violation for an illegal occupancy, up to an amount equal to six times the monthly rental paid by the displaced person, be paid to the municipality by the owner of the structure.

d. For the purposes of this section, the owner of a structure shall exclude mortgagees in possession of a structure through foreclosure.

C.2A:18-61.1h Reimbursement to displaced tenant.

4. a. If a residential tenant is displaced because of an illegal occupancy in a residential rental premises pursuant to paragraph (3) of subsection g. of section 2 of P.L.1974, c.49 (C.2A:18-61.1) and the municipality in which the rental premises is located has not enacted an ordinance pursuant to section 3 of P.L.1993, c.342 (C.2A:18-61.1g), the displaced residential tenant shall be entitled to reimbursement for relocation expenses from the owner in an amount equal to six times the monthly rental paid by the displaced person.

b. Payment by the owner shall be due five days prior to the removal of the displaced tenant. If payment is not made within this time, interest shall accrue and be due to the displaced residential tenant on the unpaid balance at the rate of 18% per annum until the amount due and all interest accumulated thereon shall be paid in full.

c. If reimbursement for which an owner is liable is not paid in full within 30 days of removal of the tenant, the unpaid balance thereof and all interest accruing thereon and, in addition thereto, an amount equal to six times the monthly rental paid by the displaced tenant shall be a lien upon the parcel of property on which the dwelling of the displaced residential tenant was located, for the benefit of that tenant. To perfect the lien, a statement showing the amount and due date of the unpaid balance and identifying the parcel shall be recorded with the county clerk or registrar of deeds and mortgages of the county in which the affected property is located, and upon recording, the lien shall have the priority of a mortgage lien. Identification of the parcel by reference to its des-

ignation on the tax map of the municipality shall be sufficient for purposes of recording. Whenever the unpaid balance and all interest accrued thereon has been fully paid, the displaced residential tenant shall promptly withdraw or cancel the statement, in writing, at the place of recording.

d. This section shall not authorize the enforcement of a lien for actual reasonable moving expenses with respect to any real property the title to which has been acquired by a municipality and which has been transferred pursuant to a rehabilitation agreement.

e. For the purposes of this section, the owner of a structure shall exclude mortgagees in possession of a structure through foreclosure.

5. This act shall take effect immediately.

Approved December 27, 1993.

CHAPTER 343

AN ACT concerning administrative law judges, clarifying the authority of the Office of Administrative Law, and amending P.L.1968, c.410 and P.L.1978, c.67.

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

1. Section 2 of P.L.1968, c.410 (C.52:14B-2) is amended to read as follows:

C.52:14B-2 Definitions.

2. As used in this act:

(a) "State agency" or "agency" shall include each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor.

(b) "Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are

required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

(c) "Administrative adjudication" or "adjudication" includes any and every final determination, decision or order made or rendered in any contested case.

(d) "The head of the agency" means and includes the individual or group of individuals constituting the highest authority within any agency authorized or required by law to render an adjudication in a contested case.

(e) "Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intraagency and interagency statements; and (3) agency decisions and findings in contested cases.

(f) "License" includes the whole or part of any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law.

(g) "Secretary" means the Secretary of State.

(h) "Director" means the Director and Chief Administrative Law Judge of the Office of Administrative Law, unless otherwise indicated by context.

2. Section 5 of P.L.1968, c.410 (C.52:14B-5) is amended to read as follows:

C.52:14B-5 Filing of rules; effective date; effect of publication.

5. (a) Each agency shall file with the Director and Chief Administrative Law Judge of the Office of Administrative Law a certified copy of each rule adopted by it.

(b) No rule hereafter adopted shall be effective unless it has been deemed to be approved by the Legislature pursuant to section 3 of this amendatory and supplementary act.

(c) The director shall: (1) accept for filing or publication any rule duly adopted and submitted by any agency pursuant to this act; (2) endorse upon the certified copy of each rule accepted for

filing pursuant to this act the date and time upon which such rule was filed; and (3) maintain the certified copy of each rule so filed in a permanent register open to public inspection.

(d) The filing of a certified copy of any rule shall be deemed to establish the rebuttable presumptions that: (1) it was duly adopted; (2) it was duly submitted for prepublication and made available for public inspection at the hour and date endorsed upon it; (3) all requirements of this act and of interagency rules of the director relative to such rule have been complied with; (4) its text is the text of the rule as adopted. Judicial notice shall be taken of the text of each rule, duly filed.

(e) The publication of a rule in the New Jersey Administrative Code or the New Jersey Register shall be deemed to establish the rebuttable presumption that the rule was duly filed and that the text of the rule as so published is the text of the rule adopted. Judicial notice shall be taken of the text of each rule published in the New Jersey Administrative Code or the New Jersey Register.

3. Section 10 of P.L.1968, c.410 (C.52:14B-10) is amended to read as follows:

C.52:14B-10 Evidence; judicial notice; recommended report and decision; final decision; effective date.

10. In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

(b) Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or administrative law judge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or oth-

erwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or administrative law judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director and Chief Administrative Law Judge of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to the head of the agency or a majority thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendations. Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

(d) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing, as such evidence may be established by rules of evidence and procedure promulgated by the director.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The final decision may incorporate by reference any or all of the recommendations of the administrative law judge. Parties shall be notified either personally or by mail

of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(e) Except where otherwise provided by law, the administrative adjudication of the agency shall be effective on the date of delivery or on the date of mailing, of the final decision to the parties of record whichever shall occur first, or shall be effective on any date after the date of delivery or mailing, as the agency may provide by general rule or by order in the case. The date of delivery or mailing shall be stamped on the face of the decision.

4. Section 3 of P.L.1978, c.67 (C.52:14F-3) is amended to read as follows:

C.52:14F-3 Director.

3. The head of the office shall be the director who shall be an attorney-at-law of this State for a minimum of five years. The director shall be appointed by the Governor with the advice and consent of the Senate.

The director shall serve for a term of six years. As used in this act, "director" shall mean the Director of the Office of Administrative Law and Chief Administrative Law Judge.

The director shall devote full time to the duties of the office and shall receive a salary as provided by law. Any vacancy occurring in the office of the director shall be filled in the same manner as the original appointment, but for the unexpired term only.

5. Section 5 of P.L.1978, c.67 (C.52:14F-5) is amended to read as follows:

C.52:14F-5 Powers and duties of director.

5. The Director and Chief Administrative Law Judge of the Office of Administrative Law shall:

a. Administer and cause the work of the office to be performed in such manner and pursuant to such program as may be required or appropriate;

b. Organize and reorganize the office, and establish such bureaus as may be required or appropriate;

c. Except as otherwise provided in subsections 1. and t., below, appoint, pursuant to the provisions of Title 11A of the New Jersey Statutes, such clerical assistants and other personnel as may be required for the conduct of the office;

d. Assign and reassign personnel to employment within the office;

e. Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudications;

f. Promulgate and enforce such rules for the prompt implementation and coordinated administration of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be required or appropriate;

g. Administer and supervise the procedures relating to the conduct of contested cases and the making of administrative adjudications, as defined by section 2 of P.L.1968, c.410 (C.52:14B-2);

h. Advise agencies concerning their obligations under the Administrative Procedure Act, subject to the provisions of subsections b. and e. of section 4 of P.L.1944, c.20 (C.52:17A-4);

i. Assist agencies in the preparation, consideration, publication and interpretation of administrative rules required or appropriate pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);

j. Employ the services of the several agencies and of the employees thereof in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency;

k. Have access to information concerning the several agencies to assure that they properly promulgate all rules required by law;

l. Assign permanent administrative law judges at supervisory and other levels who are qualified in the field of administrative law or in subject matter relating to the hearing functions of a State agency.

Administrative law judges shall receive such salaries as provided by law, shall not engage in the practice of law and shall devote full time to their judicial duties.

Administrative law judges appointed after the effective date of this amendatory act shall have been attorneys-at-law of this State for a minimum of five years. An administrative law judge appointed prior to the effective date of this amendatory act shall not be required to be an attorney or, if an attorney, shall not be required to have been an attorney-at-law for five years in order to be reappointed;

m. Appoint additional administrative law judges, qualified in the field of administrative law or in a subject matter relating to the hearing functions of a State agency, on a temporary or case basis as may be necessary during emergency or unusual situations for the proper performance of the duties of the office, pursuant to a reasonable fee schedule established in advance by the director. Administrative law judges appointed pursuant to this procedure

shall have the same qualifications for appointment as permanent administrative law judges;

n. Assign administrative law judges to conduct contested cases as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9 and 52:14B-10). Proceedings shall be scheduled for suitable locations, either at the offices of the Office of Administrative Law or elsewhere in the State, taking into consideration the convenience of the witnesses and parties, as well as the nature of the cases and proceedings;

o. Assign an administrative law judge or other personnel, if so requested by the head of an agency and if the director deems appropriate, to any agency to conduct or assist in administrative duties and proceedings other than those related to contested cases or administrative adjudications, including but not limited to rule-making and investigative hearings;

p. Assign an administrative law judge not engaged in the conduct of contested cases to perform other duties vested in or required of the office;

q. Secure, compile and maintain all reports of administrative law judges issued pursuant to this act, and such reference materials and supporting information as may be appropriate;

r. Develop and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this act;

s. Develop and implement a program of judicial evaluation to aid himself in the performance of his duties, and to assist in the making of reappointments under section 4 of P.L.1978, c.67 (C.52:14F-4). This program of evaluation shall focus on three areas of judicial performance: competence, productivity, and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses and counsel, and in presiding over contested cases; legal skills and knowledge of the law and new legal developments; analytical talents and writing abilities; settlement skills; quantity, nature and quality of caseload disposition; impartiality and conscientiousness. The director shall develop standards and procedures for this program, which shall include taking comments from selected litigants and lawyers who have appeared before a judge. The methods used by the judge but not the result arrived at by the judge in any case may be used in evaluating a judge. Before implementing any action based on the findings of the evaluation program, the director shall discuss the

findings and the proposed action with the affected judge. The evaluation by the director and supporting data shall be submitted to the Governor at least 90 days before the expiration of any term. These documents shall remain confidential and shall be exempted from the requirements of P.L.1963, c.73 (C.47:1A-1 et seq.);

t. Promulgate and enforce rules for reasonable sanctions, including assessments of costs and attorneys' fees which may be imposed on a party, and attorney or other representative of a party who, without just excuse, fails to comply with any procedural order or with any standard or rule applying to a contested case and including the imposition of a fine not to exceed \$1,000.00 for misconduct which obstructs or tends to obstruct the conduct of contested cases; and

u. Have power in connection with contested case hearings (1) to administer oaths to any and all persons, (2) to compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers, and documents of any person or persons, (3) to entertain objections to subpoenas, and (4) to rule upon objections to subpoenas except, that any orders of administrative law judges regarding these objections may be reviewed by the agency head before the completion of the contested case in accordance with procedural rules, adopted by the Director and Chief Administrative Law Judge of the Office of Administrative Law. Misconduct by any party, attorney or representative of a party or witness which obstructs or tends to obstruct the conduct of a contested case or the failure of any witness, when duly subpoenaed to attend, give testimony or produce any record, or the failure to pay any sanction assessed pursuant to subsection t. of this section, shall be punishable by the Superior Court in the same manner as such failure is punishable by such court in a case pending therein.

6. Section 6 of P.L.1978, c.67 (C.52:14F-6) is amended to read as follows:

C.52:14F-6 Administrative law judges, assignment; special appointment.

6. a. Administrative law judges shall be assigned by the director from the office to an agency to preside over contested cases in accordance with the special expertise of the administrative law judge.

b. A person who is not an employee of the office may be specially appointed and assigned by the director to preside over a specific contested case, if the director certifies in writing the reasons why the character of the case requires utilization of a

different procedure for assigning administrative law judges than is established by this amendatory and supplementary act.

c. Each administrative law judge shall have and exercise the powers conferred upon the director to the extent that the director shall delegate them by rule.

7. Section 7 of P.L.1968, c.410 (C.52:14B-7) is amended to read as follows:

C.52:14B-7 New Jersey Administrative Code; New Jersey Register; publication.

7. (a) The director shall compile, index, and publish a publication to be known as the "New Jersey Administrative Code," containing all effective rules adopted by each agency. The code shall be periodically supplemented or revised, and shall remain under the control and direction of the Office of Administrative Law regardless of the method or medium chosen to store, maintain or distribute it.

(b) The director shall publish a bulletin, at least monthly, to be known as the "New Jersey Register" setting forth: (1) the text of all rules filed during the preceding month, and (2) such notices as shall have been submitted pursuant to this act.

(c) The director shall issue annually a schedule for the filing of documents for publication in the New Jersey Register. The director may omit from the New Jersey Register or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available by the adopting agency on application thereto, and if the register or code contains a notice stating the general subject matter of the omitted rule and stating the manner in which a copy thereof may be obtained. The director may include within the New Jersey Register and the New Jersey Administrative Code any document, material or information which the director may deem appropriate and convenient.

(d) At least one copy of the New Jersey Administrative Code and copies of the New Jersey Register and compilations shall be made available upon request to the Governor, the head of each principal department, the Office of Legislative Services, the State Library and to such other State agencies and public officials as the director may designate free of charge. The director shall provide for the publication, sale and distribution of the Code and Register to the public by whatever means, including entering into contractual or licensing arrangements, most likely to ensure the widest dissemination possible.

(e) (Deleted by amendment, P.L.1993, c.343).

(f) The director may determine the order in which such rules or any parts thereof are to be presented in the New Jersey Register and the New Jersey Administrative Code; the director may number or renumber the parts, paragraphs and sections into which such rules may be divided; the director may further divide or combine existing parts, paragraphs and sections and may provide for appropriate digests, indices and other related material. The director shall not, however, change the language of any existing rule excepting a title or explanatory caption; but shall recommend any such changes as the director may deem advisable to the administrative agency authorized to adopt such rule. The director may periodically review the New Jersey Administrative Code for expired rules and shall remove such rules upon notice to the appropriate agency head.

(g) The director is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this act.

8. This act shall take effect immediately.

Approved December 27, 1993.

CHAPTER 344

AN ACT concerning local housing authorities and amending and supplementing P.L.1992, c.79 (C.40A:12A-1 et seq.).

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

1. Section 17 of P.L.1992, c.79 (C.40A:12A-17) is amended to read as follows:

C.40A:12A-17 Creation of housing authority.

17. a. Except as provided in subsection b. of this section, the governing body of any county or municipality may, by ordinance, or by resolution in the case of a county whose charter does not provide for the adoption of ordinances, create a body corporate and politic to be known as the "Housing Authority of . . . ,"

inserting the name of the county or municipality. The authority shall constitute an agency and instrumentality of the municipality or county creating it. A housing authority shall be created pursuant to the procedures of the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.). The authority shall consist of seven members. In a county that operates under the "county executive plan" set forth in the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-1 et seq.), six members shall be appointed by the county executive with the advice and consent of the board of chosen freeholders, and one member shall be appointed by the Commissioner of Community Affairs. In all other counties and municipalities, five members shall be appointed by the governing body of the county or municipality, as the case may be, one by the mayor or other chief executive officer of the municipality, or in the case of a county by the director of the board of chosen freeholders or by the chief executive officer of the county if the county's charter provides for such an officer, and one by the Commissioner of Community Affairs. The members shall serve for terms of five years and until their respective successors have been appointed and qualified; except that of the five members first appointed by the governing body one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years and one for a term of five years. All appointments shall be subject to and made in the manner required by the law under which the county or municipality is governed. Vacancies shall be filled in the same manner as the original appointments were made, but for the unexpired term. If a vacancy is not filled by the county executive, governing body or chief executive officer within 90 days of the occurrence of the vacancy, the Commissioner of the Department of Community Affairs shall notify the county executive, governing body or chief executive officer of his intent to fill the vacancy if it is not filled in 30 days. If the vacancy is not filled within that 30 day period, the commissioner may appoint a member for the unexpired term.

In any county or municipality which has heretofore created a housing authority pursuant to R.S.55:14A-4, the members of the authority who were appointed by the governing body and the chief executive officer of the county or municipality and who are in office upon the effective date of this act shall continue in office until the expiration of the terms for which they are appointed and qualified in accordance with the terms of this act.

b. No municipality which has been included with its consent within the area of operation of a county housing authority shall thereafter create a municipal housing authority. Where there is no housing authority in existence in any municipality of a county, the governing body of that county may create a housing authority, and thereafter no municipality within that county shall create an authority without the consent of the county governing body and the county housing authority.

c. A county may provide such publicly assisted housing programs as it chooses anywhere within the county; but it may provide such programs in municipalities which are within the area of operation of a county or municipal housing authority only after adoption of a resolution of the housing authority consenting thereto.

d. No more than one member of a housing authority may be an officer or employee of the municipality or county by which the authority is created. A certificate of the appointment or reappointment of any member shall be filed with the clerk of the municipality or the county, as the case may be, and that certificate shall be conclusive evidence of the due and proper appointment of that member. A member of an authority shall receive no compensation for his services, but shall be entitled to reimbursement for actual expenses necessarily incurred in the discharge of the duties of membership, including travel expenses. The powers of the authority shall be vested in the members thereof in office from time to time. Four members shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and all other purposes. Action may be taken by the authority upon the affirmative vote of the majority, but not less than four of the members present, unless in any case the bylaws of the authority shall require a larger number. The authority shall select a chairman and a vice-chairman from among its members, and shall employ an executive director, who shall be its secretary.

e. No member or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in such a project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials and services to be furnished or used in connection with any housing project. If any member or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in a housing project he shall immediately disclose the same in writing to the authority and the disclosure shall be entered upon the minutes of the authority.

Failure to disclose such an interest shall constitute misconduct in office. A member or employee required by this subsection to make such a disclosure shall not participate in any action by the authority affecting the property with respect to which such disclosure is required. For inefficiency or neglect of duty or misconduct in office a member of an authority may be removed by the governing body or officer by which he was appointed; but a member may be removed only after he has been given a copy of the charges at least 10 days prior to a hearing thereon and has had the opportunity to be heard in person or by counsel. In the event of a removal of any member of an authority a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk of the county or municipality.

2. Section 18 of P.L.1992, c.79 (C.40A:12A-18) is amended to read as follows:

C.40A:12A-18 Executive director of housing authority.

18. The executive director of a housing authority shall have attained a degree from an accredited four year college or university in a public administration, social science, or other appropriate program, and shall have at least five years' experience in public administration, public finance, realty, or similar professional employment. A master's degree in an appropriate program may substitute for two years of that experience. The executive director holding that position at the time this act becomes effective, possessing the required work experience and holding certification as a Public Housing Manager (PHM) from the National Association of Housing and Redevelopment Officials, or equivalent certification from a nationally recognized professional association in the housing and redevelopment field, shall not be required to meet the educational requirement, except as otherwise provided in section 45 of P.L.1992, c.79 (C.40A:12A-45) and shall be deemed qualified for continued employment as executive director of the authority in which he holds that post and eligible for equivalent employment in any other local public housing authority in this State.

The executive director shall serve at the pleasure of the members of the authority, and may be relieved of his duties only after not less than 120 days' notice. The authority may provide that the executive director shall be the appointing authority for all or any portion of the employees of the authority. The executive director

shall assign and supervise employees in the performance of their duties. A housing authority may elect to adopt or not to adopt the provisions of Title 11A of the New Jersey Statutes regardless of whether the establishing county or municipality has or has not adopted those provisions.

C.40A:12A-18.1 Certain qualification for employment as executive director.

3. A person who was an employee of a local housing authority in the position of Deputy Executive Director or Assistant Executive Director on the effective date of this act, who possesses the required work experience to be eligible for a position as executive director of a housing authority pursuant to section 18 of P.L.1992, c.79 (C.40A:12A-18) and who holds certification as a Public Housing Manager (PHM) from the National Association of Housing and Redevelopment Officials or equivalent certification from a nationally recognized professional association in the housing and redevelopment field, shall not be required to meet the educational requirement specified by section 18 of P.L.1992, c.79 (C.40A:12A-18), except as otherwise provided in section 45 of P.L.1992, c.79 (C.40A:12A-45), and shall be deemed to be qualified for employment as executive director of the authority in which the person is employed and eligible for equivalent employment in any other local housing authority in this State.

4. This act shall take effect immediately.

Approved December 27, 1993.

CHAPTER 345

AN ACT concerning adoption, amending P.L.1979, c.292, amending and supplementing P.L.1977, c.367 and repealing sections 3 and 18 of P.L.1977, c.367.

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

1. Section 2 of P.L.1977, c.367 (C.9:3-38) is amended to read as follows:

C.9:3-38 Definitions.

2. For the purposes of this act:

a. "Approved agency" means a nonprofit corporation, association or agency, including any public agency, approved by the Department of Human Services for the purpose of placing children for adoption in New Jersey;

b. "Child" means a person under 18 years of age;

c. "Custody" means the general right to exercise continuing control over the person of a child derived from court order or otherwise;

d. "Guardianship" means the right to exercise continuing control over the person or property or both of a child which includes any specific right of control over an aspect of the child's upbringing derived from court order;

e. "Guardian ad litem" means a qualified person, not necessarily an attorney, appointed by the court under the provisions of this act or at the discretion of the court to represent the interests of the child whether or not the child is a named party in the action;

f. "Parent" means a birth parent or parents, including the birth father of a child born out of wedlock who has acknowledged the child or to whom the court has ordered notice to be given, or a parent or parents by adoption;

g. "Placement for adoption" means the transfer of custody of a child to a person for the purpose of adoption by that person;

h. "Plaintiff" means a prospective parent or parents who have filed a complaint for adoption;

i. "Legal services" means the provision of counseling or advice related to the law and procedure for adoption of a child, preparation of legal documents, or representation of any person before a court or administrative agency;

j. "Surrender" means a voluntary relinquishment of all parental rights by a birth parent, previous adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise, for purposes of allowing a child to be adopted;

k. "Home study" means an approved agency's formal assessment of the capacity and readiness of prospective adoptive parents to adopt a child, including the agency's written report and recommendations conducted in accordance with rules and regulations promulgated by the Director of the Division of Youth and Family Services; and

l. "Intermediary" means any person, firm, partnership, corporation, association or agency, who acts for or between any parent and any prospective parent or acts on behalf of either in connection with a placement for adoption of the parent's child. An

intermediary shall not receive money or other valuable consideration in connection with the placement of a child for adoption.

2. Section 4 of P.L.1977, c.367 (C.9:3-40) is amended to read as follows:

C.9:3-40 Qualification of agencies for approval.

4. The Commissioner of Human Services shall promulgate rules and regulations relating to the qualification of agencies for approval to make placements for adoption in New Jersey. The rules and regulations shall include, but shall not be limited to standards of professional training and experience of staff and requirements relating to responsibilities of trustees, officers or other persons supervising or conducting the placement for adoption program, adequacy of facilities, maintenance and confidentiality of casework records and furnishing of reports. In the selection of adoptive parents the standard shall be the best interests of the child; and an approved agency shall not discriminate with regard to the selection of adoptive parents for any child on the basis of age, sex, race, national origin, religion or marital status provided, however, that these factors may be considered in determining whether the best interests of a child would be served by a particular placement for adoption or adoption.

3. Section 5 of P.L.1977, c.367 (C.9:3-41) is amended to read as follows:

C.9:3-41 Surrender of child.

5. a. Surrender of a child to an approved agency for the purpose of adoption, other than a surrender taken in accordance with P.L.1955, c.232 (C.9:2-13 et seq.), shall be by a signed instrument acknowledged by the person executing the instrument before an officer authorized to take acknowledgments or proofs in the State in which the instrument is executed. Prior to the execution of the surrender, the approved agency shall, directly or through its agent, inform the person executing the surrender that the instrument is a surrender of parental rights by the signatory and means the permanent end of the relationship and all contact between the parent and child. The approved agency shall advise the parent that the surrender shall constitute relinquishment of the person's parental rights in or guardianship or custody of the child named therein and consent by the person to adoption of the child. The approved agency shall offer counseling to the parent, prior to the execution of the surrender. The surrender shall

be valid and binding without regard to the age of the person executing the surrender and shall be irrevocable except at the discretion of the approved agency taking such surrender or upon order or judgment of a court of competent jurisdiction setting aside such surrender upon proof of fraud, duress or misrepresentation by the approved agency. The surrender taken pursuant to this section shall be valid whether acknowledged in this State pursuant to section 1 of P.L.1991, c.308 (R.S.46:14-2.1) or acknowledged in another state or country pursuant to section 1 of P.L.1991, c.308 (R.S.46:14-6.1).

b. Any approved agency may accept custody of a child by a duly executed instrument of surrender from a parent or guardian of the child or from another approved agency or any agency for the care and protection of children approved by any other state, by the United States or by any foreign country, which has duly obtained the authority to place the child for adoption.

c. A surrender executed in another state or foreign country by a domiciliary of that state or country and valid where executed shall be deemed a valid surrender in this State if taken more than 72 hours after the birth of the child.

d. At the request of a parent of the child, an approved agency authorized to receive surrenders, may receive that parent's surrender of his child for purposes of having the child adopted by a person specified by the surrendering parent. The agency shall follow all regulations regarding the securing of a surrender and shall cooperate with the prospective parents in the processing of the proposed adoption. An adoption based on a surrender under this subsection shall be deemed one in which the child was received from an approved agency for purposes of section 11 of P.L.1977, c.367 (C.9:3-47).

e. A surrender of a child shall not be valid if taken prior to the birth of the child who is the subject of the surrender. A surrender by the birth parent of a child shall not be valid if taken within 72 hours of the birth of the child. The denial of paternity by an alleged father, at any time including prior to the birth of the child, shall be deemed a surrender for purposes of allowing the child to be adopted.

4. Section 1 of P.L.1979, c.292 (C.9:3-41.1) is amended to read as follows:

C.9:3-41.1 Provision of available information on child's development to prospective parent.

1. a. An approved agency making an investigation of the facts and circumstances surrounding the surrender of a child shall pro-

vide a prospective parent with all available information, other than information which would identify or permit the identification of the birth parent of the child, relevant to the child's development, including his developmental and medical history, personality and temperament, the parent's complete medical histories, including conditions or diseases which are believed to be hereditary, any drugs or medications taken during pregnancy and any other conditions of the parent's health which may be a factor influencing the child's present or future health. This information shall be made available to the prospective parent prior to the actual adoptive placement to the extent available and supplemented upon the completion of an investigation conducted by an approved agency pursuant to section 12 of P.L.1977, c.367 (C.9:3-48).

b. The available information required of an approved agency by subsection a. of this section shall be presented to the adoptive parents on standardized forms prepared by the Commissioner of Human Services.

5. Section 6 of P.L.1977, c.367 (C.9:3-42) is amended to read as follows:

C.9:3-42 Jurisdiction in Chancery, venue.

6. An action for adoption shall be instituted in the Superior Court, Chancery Division, Family Part of the county in which the prospective parent resides, or in the county where the child resided immediately prior to placement for adoption, or if the child is less than three months of age, the county in which the child was born; except that whenever the child to be adopted has been received into the home of a prospective parent from an approved agency, the action may be instituted in the Superior Court, Chancery Division, Family Part of any county in which the approved agency has an office.

6. Section 7 of P.L.1977, c.367 (C.9:3-43) is amended to read as follows:

C.9:3-43 Instituting adoption actions; qualifications.

7. a. Any person may institute an action for adoption except that a married person may do so only with the written consent of his spouse or jointly with his spouse in the same action or if living separate and apart from his spouse.

b. A plaintiff, at the time of the institution of the action, shall have attained the age of 18 years and shall be at least 10 years older than the child to be adopted, except that the court for good

cause may waive either requirement, which waiver shall be recited in any judgment of adoption thereafter entered.

7. Section 8 of P.L.1977, c.367 (C.9:3-44) is amended to read as follows:

C.9:3-44 Filing of complaint.

8. Whenever a person receives a child into his home for the purpose of adoption other than from an approved agency, a complaint for adoption shall be filed within 45 days after receipt of the child. If the person receiving the child has been approved previously for placement for adoption in accordance with the provisions of section 18 of P.L.1993, c.345 (C.9:3-39.1), the person shall, immediately upon receiving the child, notify the approved agency which granted such approval of the receipt of the child, and that agency shall undertake immediate supervision of the child in accordance with rules and regulations promulgated by the Director of the Division of Youth and Family Services. The cost of such supervision shall be paid by the person receiving the child. If the agency, in the course of supervision shall determine that the child is at risk of harm or that the best interests of the child are not served by the child remaining in the home, the agency may apply to a court for removal of the child from the home. Whenever a person receives a child into his home for purposes other than adoption and it is later determined that an adoption shall be sought, a complaint for adoption shall be instituted with reasonable promptness following the determination. Failure to file the complaint in a timely manner shall not be a sole basis for refusal of the adoption but the failure shall require the filing, with the complaint, of an affidavit setting forth the reasons for the delay.

8. Section 9 of P.L.1977, c.367 (C.9:3-45) is amended to read as follows:

C.9:3-45 Notice of complaint to parents.

9. a. In an adoption proceeding pursuant to P.L.1977, c.367 (C.9:3-37 et seq.), notice of the complaint may not be waived and a notice of hearing shall be served in accordance with the Rules of Court on each parent of the child to be adopted. The notice shall inform each parent of the purpose of the action and of the parent's right to file written objections to the adoption within 20 days after notice is given in the case of a resident and 35 days in the case of a nonresident. For purposes of this section, "parent" includes (1) the husband of the mother of a child born or con-

ceived during the marriage and (2) a putative or alleged natural mother or father of a child.

b. Notice pursuant to subsection a. of this section shall not be served on a parent:

(1) Who has executed a valid surrender to an approved agency pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) or P.L.1955, c.232 (C.9:2-13 et seq.);

(2) Whose parental rights have been terminated in a separate judicial proceeding by court order;

(3) Who has, prior to the placement of the child for adoption, received notice of the intention to place the child, which notice shall inform the parent of the purpose of the placement, that failure to respond to the notice will prevent the person receiving the notice from objecting to any future adoption of the child, and that the parent has a right to file with the surrogate in the county in which venue is anticipated to lie, the address of which surrogate shall be included in the notice, written objections to the proposed placement within 20 days after notice is given, in the case of a resident, and 35 days in the case of a nonresident; and who has either failed to file written objections or denied paternity or maternity of the child. Failure to respond to this notice and object to the placement of the child for adoption shall constitute a waiver of all notice of any subsequent proceedings with regard to the child including proceedings for adoption or termination of parental rights;

(4) Who has given the child for adoption to the adopting parent, and the Superior Court, Chancery Division, Family Part, after a hearing at which the surrendering parent was heard as to the voluntariness of the surrender, has determined that the surrender was voluntary and proper; or

(5) Whose child has been made available for adoption in a foreign state or country if the United States Immigration and Naturalization Service has determined that the child has been approved for adoptive placement. The finding of the United States Immigration and Naturalization Service shall be presumed valid and no notice shall be served.

c. If personal service of the notice cannot be effected because the whereabouts of a parent of the child to be adopted are unknown, the court shall determine that an adequate effort has been made to serve notice upon the parent if the plaintiff immediately prior to or during the placement and not more than nine months prior to the filing of a complaint has:

(1) Sent the notice by regular mail and by certified mail return receipt requested, to the parent's last known address;

(2) Made a discreet inquiry as to the whereabouts of the missing parent among any known relations, friends and current or former employers of the parent;

(3) Unless otherwise restricted by law, made direct inquiries, using the party's name and last known or suspected address, to the local post office, the Division of Motor Vehicles, county welfare agency, the municipal police department, the Division of State Police, the county probation office, the Department of Corrections, and any social service and law enforcement agencies known to have had contact with the party, or the equivalents in other states, territories or countries. Failure to receive a response to the inquiries within 45 days shall be a negative response.

d. In any case where the identity of a parent cannot be determined or where the known parent of a child is unable or refuses to identify the other parent, and the court is unable from other information before the court to identify the other parent, service on that parent shall be waived by the court.

e. In conducting the hearing required by paragraph (4) of subsection b. of this section, the court shall determine that the surrender is voluntary and that the birth parent knows (1) that the hearing is to surrender birth rights; (2) that the hearing is to permanently end the relationship and all contact between parent and child; (3) that such action is a relinquishment and termination of parental rights and consent on the part of the birth parent to the adoption; and (4) that no further notice of the adoption proceedings shall be provided to the birth parent if the surrender is accepted by the court.

9. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read as follows:

C.9:3-46 Objection to adoption.

10. a. A person who is entitled to notice pursuant to section 9 of P.L.1977, c.367 (C.9:3-45) shall have the right to object to the adoption of his child. A judgment of adoption shall not be entered over an objection of a parent communicated to the court by personal appearance or by letter unless the court finds:

(1) that the parent has substantially failed to perform the regular and expected parental functions of care and support of the child, although able to do so, or

(2) that the parent is unable to perform the regular and expected parental functions of care and support of the child and that the parent's inability to perform those functions is unlikely to change in the immediate future.

The regular and expected functions of care and support of a child shall include the following:

(a) the maintenance of a relationship with the child such that the child perceives the person as his parent;

(b) communicating with the child or person having legal custody of the child and visiting the child unless visitation is impossible because of the parent's confinement in an institution, or unless prevented from so doing by the custodial parent or other custodian of the child or a social service agency over the birth parent's objection; or

(c) providing financial support for the child unless prevented from doing so by the custodial parent or other custodian of the child or a social service agency.

A parent shall be presumed to have failed to perform the regular and expected parental functions of care and support of the child if the court finds that the situation set forth in paragraph (1) or (2) has occurred for six or more months.

b. The guardian of a child to be adopted who has not executed a surrender pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) and any other person who has provided care and supervision in his home for the child for a period of six months or one half of the life of the child, whichever is less, in the two years prior to the complaint shall be given notice of the action and in accordance with the Rules of Court shall have standing to object to the adoption, which objection shall be given due consideration by the court in determining whether the best interests of the child would be promoted by the adoption.

10. 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.

If the agency's report contains any material findings or recommendations adverse to the plaintiff the agency shall serve a copy of that part of its report 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 interest 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.

11. 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; and

(4) Fix a day for 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.

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 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, as provided in section 10 of P.L.1977, c.367 (C.9:3-46) their failure to make timely objection to the adoption or their substantial failure to perform the regular and expected parental functions of care and support of the child, although able to do so, or their inability to perform these functions which is unlikely to change in the immediate future;

(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.

12. Section 13 of P.L.1977, c.367 (C.9:3-49) is amended to read as follows:

C.9:3-49 Age 10 or older, hearing appearance, child's wishes.

13. If the child sought to be adopted is of the age of 10 years or over, the appearance of the child shall be required at the final adoption hearing, unless waived by the court for good cause shown, and the child's wishes concerning the adoption shall be solicited by the

court and given consideration if the child is of sufficient capacity to form an intelligent preference regarding the adoption.

13. Section 14 of P.L.1977, c.367 (C.9:3-50) is amended to read as follows:

C.9:3-50 Entry of judgment of adoption, effect; inheritance rights.

14. a. (Deleted by amendment, P.L.1993, c.345).

b. The entry of a judgment of adoption shall establish the same relationships, rights, and responsibilities between the child and the adopting parent as if the child were born to the adopting parent in lawful wedlock. For good cause, the court may direct the entry of judgment nunc pro tunc as of the date the action was instituted. In applying the intestate laws of this State, an adopted child shall have the same rights of inheritance as if born to the adopting parent in lawful wedlock.

c. The entry of a judgment of adoption shall:

(1) terminate all parental rights and responsibilities of the parent towards the adoptive child except for a parent who is the spouse of the petitioner and except those rights that have vested prior to entry of the judgment of adoption;

(2) terminate all rights of inheritance under intestacy from or through the parent unless that parent is the spouse of the petitioner or that parent or other relative had died prior to the judgment of adoption; and

(3) terminate all rights of inheritance under intestacy from or through the child which existed prior to the adoption.

d. The court may order counseling for the adopting parents.

14. Section 15 of P.L.1977, c.367 (C.9:3-51) is amended to read as follows:

C.9:3-51 Judgments of adoption; records.

15. The clerk of the Superior Court, Chancery Division, Family Part shall promptly file all judgments of adoption and shall maintain an alphabetical index of all judgments of adoption entered each year pursuant to P.L.1977, c.367 (C.9:3-37 et seq.), all of which records shall be sealed and thereafter shall be made accessible only by court order.

15. Section 16 of P.L.1977, c.367 (C.9:3-52) is amended to read as follows:

C.9:3-52 Records of proceedings.

16. a. All records of proceedings relating to adoption, including the complaint, judgment and all petitions, affidavits, testimony,

reports, briefs, orders and other relevant documents, shall be filed under seal by the clerk of the court and shall at no time be open to inspection or copying unless the court, upon good cause shown, shall otherwise order. An index to all adoption proceedings shall be maintained by the clerk of the court, but no index of adoption proceedings shall be open to inspection or copying or be made public except upon order of the court.

b. Upon entry of a judgment of adoption, the clerk of the court shall certify to the State Registrar, any successor agency or any similar agency in the State or country of the child's birth, the date of entry of the judgment, the names of the adopting parent or parents, the name of the child, the date and place of birth of the child and the new name of the child if changed by the judgment of adoption.

16. Section 17 of P.L.1977, c.367 (C.9:3-53) is amended to read as follows:

C.9:3-53 Costs of proceedings.

17. The costs of all proceedings pursuant to P.L.1977, c.367 (C.9:3-37 et seq.) shall be borne by the plaintiff, including the costs incurred by an approved agency acting pursuant to an order of the court; except that the approved agency may waive part or all costs. Payment of costs shall not be a condition precedent to entry of judgment. The costs shall not include the provision of counsel for any person, other than the plaintiff, entitled to the appointment of counsel pursuant to P.L.1977, c.367 (C.9:3-37 et seq.).

17. Section 19 of P.L.1977, c.367 (C.9:3-55) is amended to read as follows:

C.9:3-55 Report of prospective parents.

19. a. A prospective parent who is not a brother, sister, aunt, uncle, grandparent, foster parent, birth father or stepparent of the child to be adopted shall file before the complaint is heard, in accordance with court rules, a detailed report which shall be signed and verified by each prospective parent and shall disclose all sums of money or other valuable consideration paid, given or agreed to be given to any person, firm, partnership, corporation, association or agency by or on behalf of the prospective parent in connection with the adoption, and the names and addresses of each person, firm, partnership, corporation, association or agency to whom the consideration was given or promised. The report, a copy of which shall be provided to the approved agency pursuant to section 11 or

12 of P.L.1977, c.367 (C.9:3-47 or C.9:3-48), shall include but not be limited to expenses incurred or to be incurred by or on behalf of a prospective parent in connection with:

- (1) The birth of the child;
- (2) The placement for adoption of the child with the prospective parent;
- (3) Medical or hospital care received by the mother or the child during the mother's pre- and postnatal period; and
- (4) Services relating to the adoption or to the placement for adoption, including legal services, which were rendered or are to be rendered to or for the benefit of the prospective parent, either parent of the child or any other person or agency.

b. Whenever based upon a report filed pursuant to this section it appears to the court that any person may have violated section 18 of P.L.1993, c.345 (C.9:3-39.1) the court or the division may refer the matter to the appropriate county prosecutor.

C.9:3-39.1 Offering, assisting in the placement of child for adoption, conditions.

18. a. A person, firm, partnership, corporation, association or agency shall not place, offer to place or materially assist in the placement of any child for adoption in New Jersey unless:

- (1) the person is the parent or guardian of the child, or
- (2) the firm, partnership, corporation, association or agency is an approved agency to act as agent, finder or to otherwise materially assist in the placement of any child for adoption in this State, or
- (3) the placement for adoption is with a brother, sister, aunt, uncle, grandparent, birth father or stepparent of the child, or
- (4) the placement is through an intermediary and (a) the person with whom the child is to be placed has been approved for placement for adoption by an approved agency home study which consists of the agency's formal written assessment of the capacity and readiness of the prospective adoptive parents to adopt a child, conducted in accordance with rules and regulations promulgated by the Director of the Division of Youth and Family Services;

(b) The birth parent, except one who cannot be identified or located prior to the placement of the child for adoption, shall be offered counseling as to his or her options other than placement of the child for adoption. Such counseling shall be made available by or through an approved licensed agency in New Jersey or in the birth parent's state or country of residence. The fact that counseling has been made available, and the name, address and telephone number of the agency through which the counseling is available,

shall be confirmed in a written document signed by the birth parent and acknowledged in this State pursuant to section 1 of P.L.1991, c.308 (R.S.46:14-2.1) or acknowledged in another state or country pursuant to section 1 of P.L.1991, c.308 (R.S.46:14-6.1) a copy of which shall be provided to the birth parent and the agency conducting the adoption complaint investigation pursuant to section 12 of P.L.1977, c.367 (C.9:3-48) and shall be filed with the court prior to termination of parental rights; and

(c) Written notice shall be given to the birth parent, except one who cannot be identified or located prior to the placement of the child for adoption, and the adoptive parent that the decision not to place the child for adoption or the return of the child to the birth parent cannot be conditioned upon reimbursement of expenses by the birth parent to the adoptive parent, and that payments by the adoptive parent are non-refundable. Provision of such notice shall be confirmed in a written document signed by the birth parent and adoptive parent in separate documents which shall be acknowledged in this State pursuant to section 1 of P.L.1991, c.308 (C.46:14-2.1) or acknowledged in another state or country pursuant to section 1 of P.L.1991, c.308 (R.S.46:14-6.1), a copy of which shall be provided to the birth parent, and the agency conducting the adoption complaint investigation pursuant to section 12 of P.L.1977, c.367 (C.9:3-48), and shall be filed with the court prior to termination of parental rights.

b. The Superior Court in an action by the Commissioner of Human Services may enjoin any party found by the court to have violated this section from any further violation of this section.

c. A person, firm, partnership, corporation, association, or agency violating subsection a. of this section shall be guilty of a crime of the third degree.

d. A person, firm, partnership, corporation, association, intermediary or agency other than an approved agency which pays, seeks to pay, receives, or seeks to receive money or other valuable consideration in connection with the placement of a child for adoption shall be guilty of a crime of the second degree.

e. It shall not be a violation of subsection d. of this section: (1) to pay, provide or reimburse to a parent of the child, or for a parent of the child to receive payment, provision or reimbursement for medical, hospital, counseling or other similar expenses incurred in connection with the birth or any illness of the child, or the reasonable living expenses of the mother of the child during her pregnancy including payments for reasonable food, clothing,

medical expenses, shelter, and religious, psychological, vocational, or similar counseling services during the period of the pregnancy and for a period not to exceed four weeks after the termination of the pregnancy by birth or otherwise. These payments may be made directly to the birth mother or on the mother's behalf to the supplier of the goods or services, or

(2) where the child is from a foreign country, reasonable and customary fees and expenses of a foreign agency or attorney for the care or representation of the child during any period of foster or institutional care in the child's country of origin, or

(3) reasonable attorneys' fees and costs for legal services.

C.9:3-54.1 Rules, regulations.

19. The Commissioner of Human Services shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations necessary to implement the provisions of this act.

Repealer.

20. Sections 3 and 18 of P.L.1977, c.367 (C.9:3-39 and C.9:3-54) are repealed.

C.9:3-54.2 Home study; fingerprint and criminal data.

21. a. (1) In addition to meeting the other requirements established by the Department of Human Services, a home study completed by an approved agency shall include a recommendation regarding the suitability of the home for the placement of a child based upon the results of State and federal criminal history record checks for each prospective adoptive parent and each adult residing in the home.

(2) Each prospective adoptive parent and each member of the prospective adoptive parent's household, age 18 or older, shall submit to the approved agency standard fingerprint cards containing his name, address and fingerprints taken by a State or municipal law enforcement agency.

(3) The cost of all criminal history record checks conducted pursuant to this section shall be paid by the prospective adoptive parent or household member at the time the fingerprint cards are submitted.

(4) The approved agency shall forward the fingerprint cards and payment to the commissioner.

(5) The commissioner is authorized to exchange fingerprint data and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in making the recommendations provided for in this section.

(6) The department shall advise the approved agency of information received from State and federal criminal history record checks based upon the fingerprints submitted by the agency. Information provided to the approved agency shall be confidential and not disclosed by the approved agency to any individual or entity without the written permission of the person who is the subject of the record check.

(7) The commissioner shall adopt regulations for the use of criminal history record information by approved agencies when determining the suitability of a home for the placement of a child for the purposes of adoption.

b. (1) Beginning one year after the effective date of this act, a home study completed by an approved agency shall include a recommendation regarding the suitability of the home for the placement of the child based upon a check for any records which might reveal a history of child abuse or neglect by the proposed adoptive parent or member of the parent's household who is 18 years of age or older.

(2) Beginning one year after the effective date, at the request of an approved agency, the commissioner or his designee shall conduct a search of the records of the Division of Youth and Family Services regarding referrals of dispositions of child abuse or neglect matters as to the proposed adoptive parent and any member of the parent's household 18 years of age or older, and, if there is information that would raise a question of the suitability of the proposed adoptive parent or member of the parent's household to have guardianship of a child, shall provide that information to the approved agency for its consideration. Information provided to the approved agency pursuant to this paragraph shall be confidential. The commissioner shall establish penalties for disclosure of this confidential information.

22. One year after the effective date of this act, the Division of Youth and Family Services shall report to the Governor and the Legislature on the effectiveness of the use of intermediaries in facilitating the adoption of children which report shall include any recommendations for changes necessary to improve the adoption process.

23. This act shall take effect on the 120th day after enactment and shall apply to any complaint for adoption filed on or after the effective date.

Approved December 28, 1993.

CHAPTER 346

AN ACT creating an additional Superior Court judgeship and amending N.J.S.2B:2-1.

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

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

Number of judges.

2B:2-1. Number of Judges. a. The Superior Court shall consist of 403 judges.

b. (1) The Superior Court shall at all times consist of the following number of judges, who at the time of their appointment and reappointment were resident of each county:

Atlantic	11
Bergen	27
Burlington	7
Camden	15
Cape May	4
Cumberland	6
Essex	34
Gloucester	9
Hudson	24
Hunterdon	3
Mercer	9
Middlesex	24
Monmouth	17
Morris	15
Ocean	15
Passaic	16
Salem	2
Somerset	6
Sussex	4
Union	20
Warren	3

(2) Additionally, the following number of those judges of the Superior Court satisfying the residency requirements set forth above shall at all times sit in the county in which they reside:

Atlantic	4
Bergen	12
Burlington	4

Camden	8
Cape May	2
Cumberland	4
Essex	14
Gloucester	6
Hudson	6
Hunterdon	2
Mercer	6
Middlesex	8
Monmouth	4
Morris	6
Ocean	8
Passaic	6
Salem	2
Somerset	4
Sussex	2
Union	6
Warren	2

2. This act shall take effect immediately.

Approved December 29, 1993.

CHAPTER 347

AN ACT creating an additional Superior Court judgeship and amending N.J.S.2B:2-1.

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

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

Number of judges.

2B:2-1. Number of Judges. a. The Superior Court shall consist of 404 judges.

b. (1) The Superior Court shall at all times consist of the following number of judges, who at the time of their appointment and reappointment were resident of each county:

Atlantic	11
Bergen	27
Burlington	7
Camden	15

Cape May	4
Cumberland	7
Essex	34
Gloucester	9
Hudson	24
Hunterdon	3
Mercer	9
Middlesex	24
Monmouth	17
Morris	15
Ocean	15
Passaic	16
Salem	2
Somerset	6
Sussex	4
Union	20
Warren	3

(2) Additionally, the following number of those judges of the Superior Court satisfying the residency requirements set forth above shall at all times sit in the county in which they reside:

Atlantic	4
Bergen	12
Burlington	4
Camden	8
Cape May	2
Cumberland	4
Essex	14
Gloucester	6
Hudson	6
Hunterdon	2
Mercer	6
Middlesex	8
Monmouth	4
Morris	6
Ocean	8
Passaic	6
Salem	2
Somerset	4
Sussex	2
Union	6
Warren	2

2. This act shall take effect immediately.

Approved December 29, 1993.

CHAPTER 348

AN ACT appropriating moneys from the "Hazardous Discharge Fund of 1986" for the purpose of financing the cost of identification, cleanup and removal of hazardous discharges.

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

1. There is appropriated from the "Hazardous Discharge Fund of 1986," created pursuant to the "Hazardous Discharge Bond Act of 1986," P.L.1986, c.113, as amended by P.L.1989, c.182, the sum of \$150,000,000 to the Department of Environmental Protection for the purpose of financing the cost of the identification, cleanup, and removal of hazardous discharges.

2. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1986, c.113 and P.L.1989, c.182.

3. This act shall take effect immediately.

Approved December 29, 1993.

CHAPTER 349

AN ACT concerning property insurance.

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

1. The Legislature finds that property insurers, as a condition of doing business in this State, have a responsibility to contribute to an orderly market for property insurance, and that there is a compelling State interest in maintaining an orderly market for property insurance. The Legislature further finds that the recent storms that have caused millions of dollars of insured losses in New Jersey have reinforced the need of consumers to have reliable homeowner's or secondary residence insurance coverage; however, the enormous monetary impact to insurers of claims generated as a

result of these storms has prompted insurers to propose substantial cancellation or nonrenewal of their homeowner's or secondary residence policyholders. The Legislature further finds that the cancellations and nonrenewals announced, proposed, or contemplated by certain insurers constitute a significant danger to the public health, safety, and welfare, especially in the context of a new hurricane season, and destabilize the insurance market. In furtherance of the overwhelming public necessity for an orderly market for property insurance, it is the intent of the Legislature to impose, for a limited time, a moratorium on cancellation or nonrenewal of homeowner's or secondary residence insurance policies.

2. No insurer authorized to transact property insurance in this State shall cancel or nonrenew any homeowner's or secondary residence insurance policy in this State, or issue any notice of cancellation or nonrenewal of a homeowner's or secondary residence policy on the basis of proximity to water or on the basis of risk of windstorm related claims. Every cancellation or nonrenewal of a homeowner's or secondary residence policy shall be substantiated by underwriting rules which may be requested by the Commissioner of Insurance at any time with respect to the cancellation of a homeowner's or secondary residence policy.

3. An individual whose homeowner's or secondary residence policy was cancelled or not renewed on or after January 1, 1993, on the basis of proximity to water or on the basis of risk of windstorm related claims and who was not subsequently insured in the voluntary market, shall be entitled to reapply to the insurer that cancelled or refused to renew the policy, and no insurer shall refuse to issue to such an individual a homeowner's or secondary residence policy that includes the same coverage as had been included prior to cancellation or nonrenewal.

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

5. The ad hoc task force on windstorm damage appointed by the Commissioner of Insurance in March of 1993 shall, not later than 30 days following the date of enactment of this act, report its findings to the Governor and the Legislature with respect to: a. the presence of any regional problem relative to the availability

of homeowner's or secondary residence insurance; and b. recommendations for corrective measures should such a problem be found to exist.

6. This act shall take effect immediately and shall expire 90 days thereafter.

Approved December 29, 1993.

CHAPTER 350

AN ACT concerning family day care providers, amending P.L.1977, c.102 and P.L.1987, c.27, supplementing Title 30 of the Revised Statutes, repealing sections 6 through 13 of P.L.1991, c.278 and making an appropriation therefor.

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

C.30:5B-25.1 Findings, declarations.

1. The Legislature finds and declares that:

a. The need for a variety of child care options for families with children between birth and 13 years of age has grown significantly in the past 20 years. As a result, family day care has become one of the most used forms of child care in the State.

b. In 1987, New Jersey implemented a voluntary registration system through the "Family Day Care Provider Registration Act," P.L.1987, c.27 (C.30:5B-16 et seq.). The purpose of the act was to provide Statewide health and safety standards to protect children in family day care homes. Through this voluntary system, providers are able to qualify for the purchase of insurance, enroll in the Child Care Food Program, list their homes with Statewide child care resource and referral agencies, and provide care for children through State-funded programs. Parents were assured that minimum safety standards were met and the training of providers and the monitoring of homes was taking place.

c. When the 1987 law was amended in 1991 to require criminal history record background checks for all adults in the home of a family day care provider, both registrations and renewals dropped significantly. This was due to the cost of criminal history

record background checks. Since the family day care registration system is voluntary, providers chose to continue to operate without State supervision. In 1992, the State established an 18 month moratorium on background checks during which time, an alternative procedure for checking the background of prospective family day care providers could be developed.

d. It is therefore in the best interests of the State to find a system of background checks which balances the rights of family day care providers with the State's duty to protect the safety of its youngest citizens.

C.30:5B-25.2 Definitions.

2. As used in sections 1 through 4 of P.L.1993, c.350 (C.30:5B-25.1 through C.30:5B-25.4):

"Central registry" means the central registry of the Division of Youth and Family Services in the Department of Human Services established pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11).

"Provider" means a family day care provider as defined by section 3 of P.L.1987, c.27 (C.30:5B-18) and includes, but is not limited to, a family day care provider's assistant and a substitute family day care provider.

"Family day care sponsoring organization" means an agency or organization which contracts with the Division of Youth and Family Services to assist in the registration of family day care providers in a specific geographic area pursuant to P.L.1987, c.27 (C.30:5B-16 et seq.).

"Household member" means an individual over 14 years of age who resides in a family day care provider's home.

C.30:5B-25.3 Central registry search.

3. a. The Division of Youth and Family Services in the Department of Human Services shall conduct a search of its central registry to determine if a report of child abuse or neglect has been filed, pursuant to section 3 of P.L.1971, c.437 (C.9:6-8.10), involving a person registering as a prospective provider or a household member of the prospective provider or as a current provider or household member of the current provider.

b. The division shall conduct the search only upon receipt of the prospective or current provider or household member's written consent to the search. If the person refuses to provide his consent, the family day care sponsoring organization shall deny the prospective or current provider's application for a certificate or renewal of registration.

c. The division shall advise the sponsoring organization of the results of the central registry search within a time period to be determined by the Department of Human Services.

d. The division shall not issue a certificate or renewal of registration to a prospective or current provider unless the division has first determined that no substantiated charge of child abuse or neglect against the prospective or current provider or household member is found during the central registry search.

C.30:5B-25.4 Rules, regulations.

4. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Department of Human Services shall adopt rules and regulations necessary to implement the provisions of sections 1 through 4 of P.L.1993, c.350 (C.30:5B-25.1 through C.30:5B-25.4) including, but not limited to:

a. Implementation of an appeals process to be used in the case of the denial of an application for a certificate or for renewal of registration based upon information obtained during a central registry search; and

b. Establishment of time limits for conducting a central registry search and providing a family day care sponsoring organization with the results of the search.

5. 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 subsection b. herein.

b. The division may release the records and reports referred to in subsection a., or parts thereof, 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;

(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 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, upon its finding that access to such records may be necessary for determination of an issue before the court, and such records may be disclosed by the court 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;

(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) 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;

(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 al.) and as necessary, for use in administrative appeals related to information obtained through a central registry search.

Any individual, agency, court, grand jury or legislative committee which receives from the division the records and reports referred to in subsection a., shall keep such records and reports, or parts thereof, confidential.

6. Section 8 of P.L.1987, c.27 (C.30:5B-23) is amended to read as follows:

C.30:5B-23 Certificate of registration, standards, violations.

8. a. The division shall also establish standards for the issuance, renewal, denial, suspension and revocation of a certificate of registration which the family day care sponsoring organization shall apply. In developing the standards, the division shall consult with the Advisory Council on Child Care established pursuant to the "Child Care Center Licensing Act," P.L.1983, c.492 (C.30:5B-1 et seq.).

b. A person operating as a registered family day care provider who violates the provisions of this act by failing to adhere to the standards established by the division pursuant to this act shall be notified in writing of the violation of the provisions of this act and provided with an opportunity to comply with those provisions. For a subsequent violation, the person's certificate of registration may be revoked, or the person may be fined in an amount determined by the Commissioner of Human Services, or both. The receipt of excessive complaints by the municipal police or other local or State authorities concerning neglect of children, excessive noise, or property damage resulting from the operation of a family day care home may be considered by the division when renewing, suspending or revoking a certificate of registration.

c. The division, before denying, suspending, revoking or refusing to renew a certificate of registration, shall give notice thereof to the provider personally, or by certified or registered mail to the last known address of the family day care home with return receipt requested. The notice shall afford the provider the opportunity to be heard. The hearing shall take place within 60 days from the receipt of the notice and shall be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. If the certificate of registration is suspended or revoked or not renewed, the provider shall so notify the parent of each child attending the family day care home in writing within 10 days of the action.

e. (Deleted by amendment, P.L.1993, c.350).

7. There is appropriated \$95,000 from the General Fund to the Department of Human Services to administer the provisions of this act.

Repealer.

8. Sections 6 through 13, inclusive, of P.L.1991, c.278 (C.30:5B-23.1 through 30:5B-23.7 and C.53:1-20.9), are repealed.

9. This act shall take effect 18 months following enactment, except that section 8 shall take effect immediately.

Approved December 29, 1993.

CHAPTER 351

AN ACT concerning groundwater remedial actions and supplementing P.L.1977, c.74 (C.58:10A-1 et seq.) and P.L.1975, c.291 (C.40:55D-1 et seq.).

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

C.58:10A-7.2 Groundwater remedial action; contents of application for permit, request for consent; definitions.

1. a. An application for a permit issued by the Department of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.) for the discharge of groundwater to surface water involving a groundwater remedial action necessitated by a discharge from an underground storage tank containing petroleum products or a groundwater remedial action involving petroleum products, shall contain, in addition to a properly filled application form:

(1) such documentation or other information on the permit application as may be prescribed by the department on a checklist made available to a prospective applicant;

(2) if the discharge from the proposed groundwater remedial action is located within a wastewater service district or area of a local public entity, a certified statement that a request, dated at least 60 days prior to the filing of the permit application, had been made to the local public entity to discharge the groundwater into the wastewater collection or treatment facilities of that entity, and that no reply has been received from that entity, or a written statement by the local public entity, dated not more than 60 days prior to the filing of the permit application with the department, that the entity has approved or rejected a written request by the applicant to discharge the treated groundwater into the wastewater collection or treatment facilities of that entity. Notwithstanding that a local public entity has approved the request to discharge groundwater into its facilities, the department

may approve the applicant's permit to discharge the groundwater to surface water upon a finding that it is in the public interest;

(3) a certified statement that a copy of the completed application form along with a consent request, as prescribed in subsection b. of this section, have been filed with the clerk of the municipality in which the site of the proposed groundwater remedial action is located, and setting forth the date of the filing with the host municipality, which filing shall be made prior to, or concurrent with, the filing of the application with the department; and

(4) within the pinelands area, documentation from the Pinelands Commission that the application is consistent with the requirements of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) or any regulations promulgated pursuant thereto and section 502 of the "National Parks and Recreation Act of 1978" (Pub.L. 95-625).

b. The department shall prescribe the form and content of a request for consent filed with a municipality pursuant to paragraph (3) of subsection a. of this section. The municipal consent request shall be limited to an identification of all municipal approvals with which the applicant is required to comply, the status of any applications filed therefor, and whether or not the municipality consents to the application and the specific reasons therefor. The request for consent form shall also advise that documentation and other information relating to the application have been filed and are available for review at the department. A municipality receiving a request for consent form shall have 30 days from the date of receipt of a copy of the application and request for consent form to file with the department the information requested, and its consent of, or objections to, the application. Municipal consent or objection to a groundwater remedial action shall be by resolution of the governing body of the municipality unless the governing body has, by resolution, delegated such authority to a qualified officer or entity thereof, in which case the endorsement shall be signed by the designated officer or official of the entity. Notwithstanding that a municipality objects to a permit application or fails to file a consent or objection to the permit application, the department may approve the applicant's permit application to discharge groundwater to surface water.

c. An application pursuant to subsection a. of this section shall be deemed complete, for the purposes of departmental review, within 30 days of the filing of the application with the department unless the department notifies the applicant, in writ-

ing, prior to expiration of the 30 days that the application has failed to satisfy one or more of the items identified in subsection a. of this section. If an application is determined to be complete, the department shall review and take final action on the completed application within 60 days from commencement of the review, or, if the parties mutually agree to a 30-day extension, within 90 days therefrom. The review period for a completed application shall commence immediately upon termination of the 30-day period, or upon determination by the department that the application is complete, whichever occurs first. If the department fails to take final action on a permit application for a general permit in the time frames set forth in this subsection, that general permit shall be deemed to have been approved by the department. The department shall review an application for a permit pursuant to subsection a. of this section and shall take action on that application pursuant to the time frames set forth in this subsection, notwithstanding that all of the municipal approvals have not been obtained, unless such approvals would materially affect the terms and conditions of the permit, except that in such instances the department may condition its approval of the application on the necessary municipal approvals being subject to the terms and conditions of the application.

d. The department may issue a general permit for the discharge of groundwater to surface water pursuant to a groundwater remedial action of discharged petroleum products as provided in subsection a. of this section.

e. (1) The department may not require a municipal consent of a treatment works application for a groundwater remedial action for which a permit application is submitted pursuant to subsection a. of this section.

(2) If a completed application for a treatment works approval for a groundwater remedial action is filed with the department at the same time as an application for a general permit therefor, the department shall concurrently review the two applications, except that the review of the application for the treatment works approval for a groundwater remedial action shall not be subject to the time frames set forth in subsection c. of this section.

f. The provisions of this section shall apply to applications filed on or after the effective date of this act, except that the Department of Environmental Protection may implement any of the provisions of this section prior to that date.

g. The department may, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), adopt rules and regulations to implement the provisions of this act.

h. For purposes of this section:

"General permit" means a permit issued by the department for similar discharges.

"Groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source.

"Local public entity" means a sewerage authority established pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.), a municipal authority established pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), the Passaic Valley Sewerage Commissioners continued pursuant to R.S.58:14-2, a joint meeting established pursuant to R.S.40:63-68 et seq. or a local unit authorized to operate a sewerage facility pursuant to N.J.S.40A:26A-1 et seq., or any predecessor act.

"Underground storage tank" shall have the same meaning as in section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used herein underground storage tanks shall include:

(1) farm underground storage tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) underground storage tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less; and

(3) underground storage tanks used to store heating oil for on-site consumption in a residential building.

C.58:10A-10.11 Affirmative defense against liability for certain violations.

2. a. A permittee shall be entitled to an affirmative defense against liability for any penalty assessable pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10) or section 6 of P.L.1990, c.28 (C.58:10A-10.1) for a violation of an effluent limitation of a permit issued pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), which violation:

(1) occurs in the course of a permitted groundwater remedial action;

(2) is the first violation of that permit limitation; and

(3) involves an exceedance of a permit limitation that could not reasonably have been anticipated by the permittee, unless it is established by a preponderance of the evidence that the violation was the result of a negligent act or omission of the permittee.

Demonstration that an act or omission of a person performing groundwater remedial action accorded with generally accepted remedial action practices, and utilized the best technology reasonably available to the permittee for the approved remedial action at

the time of the action, shall create a rebuttable presumption that the act or omission was not negligent.

b. An affirmative defense claim filed pursuant to subsection a. of this section shall be denied by the Department of Environmental Protection or a delegated local agency, as defined in section 3 of P.L.1977, c.74 (C.58:10A-3), as appropriate, if:

(1) the equipment used in the remedial action had not been properly maintained or was not being properly operated at the time of the violation, and the failure to properly maintain or operate the equipment was the proximate cause of the exceedance;

(2) the permittee fails, as required by law or rule or regulation, to provide in a prompt manner to the department or a delegated local agency:

(a) notification of the violation; and

(b) written information on the nature and extent of the permit exceedance and, if known, the reasons therefor;

(3) the permittee fails to take immediate measures, upon first becoming aware of the violation, to terminate the violation and to abate any adverse consequences therefrom; or

(4) the permittee fails to file with the department or delegated local agency a remedial action protocol, setting forth the procedures to be followed to prevent a recurrence of the exceedance.

c. A determination by the department or delegated local agency on an affirmative defense claim made pursuant to subsection a. of this section shall be considered final agency action on the matter for purposes of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and paragraph (5) of subsection d. of section 10 of P.L.1977, c.74 (C.58:10A-10).

d. If the department approves an affirmative defense claim filed pursuant to subsection a. of this section, the permit exceedance shall not be considered a violation for the purposes of designating a person as a significant noncomplier under section 6 of P.L.1990, c.28 (C.58:10A-10.1).

e. Nothing in this section shall be construed to limit the authority of the department to adopt regulations or permit conditions for groundwater remedial actions that exempt a violation for which an affirmative defense claim may be filed pursuant to the provisions of this section, or for exceedances of one or more permit parameters occurring during the start-up phase of a remedial action, as defined in a permit.

As used in this section “groundwater remedial action” means the removal or abatement of one or more pollutants in a groundwater source.

C.40:55D-66.8 Siting of structure, equipment for groundwater remedial action.

3. a. The siting of a structure or equipment required for a groundwater remedial action approved by the Department of Environmental Protection pursuant to P.L.1977, c.74 (C.58:10A-1 et seq.), shall be deemed to be essential to the continuation of an existing structure or use of a property, including a nonconforming use, or to the development of a property, as authorized in the zoning ordinance of a municipality. A groundwater remedial action subject to this section, including any structure or equipment required in connection therewith, shall, therefore, be deemed to be an accessory use or structure to any structure or use authorized by the development regulations of a municipality; shall be a permitted use in all zoning or use districts of a municipality; and shall not require a use variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

b. A municipality may, by ordinance, adopt reasonable standards for the siting of a structure or equipment required for a groundwater remedial action subject to subsection a. of this section. The standards may include specification of the duration of time allowed for the removal from a site of all structures or equipment used in the remedial action upon expiration of the term of the discharge permit or completion of the remedial action, whichever shall be sooner. Nothing in this subsection shall be deemed to authorize a municipality to require site plan review by a municipal agency for a groundwater remedial action, but an ordinance establishing siting standards may provide penalties and may authorize the municipality to seek injunctive relief for violations of the ordinance.

As used in this section, “groundwater remedial action” means the removal or abatement of pollutants in groundwater, and includes de-watering activities performed in connection with the removal or replacement of underground storage tanks, as defined in section 2 of P.L.1986, c.102 (C.58:10A-22), except that as used herein underground storage tanks shall include:

- (1) farm underground storage tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) underground storage tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less; and

(3) underground storage tanks used to store heating oil for on-site consumption in a residential building.

C.40:55D-66.9 Variance for remedial action.

4. If, for any of the reasons set forth in subsection c. of section 57 of P.L.1975, c.291 (C.40:55D-70), a variance is required under that subsection c. for the siting of a structure or equipment to be used in a groundwater remedial action subject to section 3 of P.L.1993, c.351 (C.40:55D-66.8), a variance for the remedial action shall be deemed necessary to avoid exceptional and undue hardship on an owner, lessee or developer of a property for which a variance application is made; however, a zoning ordinance may authorize the zoning board of adjustment or planning board, as appropriate, to establish reasonable terms and conditions for issuance of a subsection c. variance. The zoning board of adjustment or planning board, as appropriate, shall review and take final action on an application for a subsection c. variance for a groundwater corrective action at the next meeting of the zoning board of adjustment or planning board, as appropriate, occurring not less than 20 days following the filing of an application therefor, unless the zoning board of adjustment or planning board, as appropriate, determines that the application lacks information indicated on a checklist adopted by ordinance and made available to the applicant, and the applicant has been notified, in writing, of the specific deficiencies prior to expiration of the 20-day period.

5. This act shall take effect 30 days following enactment, and shall apply to applications filed on and after that date.

Approved December 29, 1993.

CHAPTER 352

AN ACT concerning solid waste disposal facilities, and appropriating moneys from the "Resource Recovery and Solid Waste Disposal Facility Fund."

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

1. There is appropriated to the Department of Environmental Protection from the "Resource Recovery and Solid Waste Disposal Facility Fund" established pursuant to section 14 of the "Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985," P.L.1985, c.330, the sum of \$11,000,000 for the purpose of providing a zero-interest State loan to the following local government unit to finance the construction of a resource recovery facility as follows:

Burlington County	\$11,000,000

2. Repayment of the loan made pursuant to this act shall be made to the "Resource Recovery and Solid Waste Disposal Facility Fund" in accordance with the terms of a written loan agreement. The form of the loan agreement shall be specified by the State Treasurer.

3. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1985, c.330.

4. This act shall take effect immediately.

Approved December 29, 1993.

CHAPTER 353

AN ACT concerning the distribution of parimutuel pools on horse races 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 2 of P.L.1977, c.200 (C.5:5-44.3) is amended to read as follows:

C.5:5-44.3 Distribution of State share.

2. All moneys received by the commission, pursuant to section 46 of P.L.1940, c.17 (C.5:5-66), section 2 of P.L.1984, c.236 (C.5:5-66.1), section 5 of P.L.1982, c.201 (C.5:5-98), or section 7 of P.L.1971, c.137 (C.5:10-7), as its share of the total contributions to all parimutuel pools conducted or made on the additional racing days hereinbefore provided for shall be distributed to the

organizations and in the amounts designated by the New Jersey State Developmental Disabilities Council, created pursuant to Executive Order Number 20 of 1971, as modified pursuant to Executive Order Number 49 of 1973 and Executive Order Number 42 of 1976, as hereinafter prescribed.

2. Section 46 of P.L.1940, c.17 (C.5:5-66) is amended to read as follows:

C.5:5-66 Disposition of undistributed deposits.

46. Every permitholder engaged in the business of conducting horse race meetings under this act, except the New Jersey Sports and Exposition Authority established pursuant to P.L.1971, c.137 (C.5:10-1 et seq.) and the Garden State Racetrack as provided in section 5 of P.L.1982, c.201 (C.5:5-98), shall make disposition of the deposits remaining undistributed pursuant to section 44 as follows:

a. In the case of harness races:

(1) 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.1992, c.113 (C.5:5-44.7), or P.L.1993, c.15 (C.5:5-44.8), pay to the commission, at the time and in the manner prescribed by the commission, 1.25% of so much of the total contributions to all parimutuel pools conducted or made on any and every horse race, except that for pools where the patron is required to select two horses, the permitholder shall pay 2.25% of the total contributions and for pools where the patron is required to select three or more horses, the permitholder shall pay 5.25% of the total contributions;

(2) Hold and set aside in an account designated as a special trust account 1.15% 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:

(a) 37% 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;

(b) 55% 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;

(c) 5% thereof for contributions and awards designed to improve and promote the standardbred breeding industry in New Jersey through payment of awards to owners and breeders of New Jersey bred horses which are registered with the Standardbred

Breeders' and Owners' Association of New Jersey and which earn portions of purses in open events on New Jersey tracks, and to owners of stallions posted on the official stallion roster of the Standardbred Breeders' and Owners' Association of New Jersey, which sire such registered New Jersey bred money earners;

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

(3) Retain 7.7875%, or in the case of races on a charity racing day 7.20%, of so much of such total contributions for his own uses and purposes. Notwithstanding the foregoing, for pools where the patron is required to select two horses, the permit-holder shall retain 8.7575%, or in the case of races on a charity racing day 7.70%, of the total contributions and for pools where the patron is required to select three or more horses, the permitholder shall retain 11.6675%, or in the case of races on a charity racing day 9.20%, of the total contributions. Each permitholder shall contribute out of its 11.6675% or 9.20% share of pools, where the patron is required to select three or more horses, a sum deemed necessary by the racing 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.

(4) Distribute as purse money and for programs designed to aid the horsemen and the Standardbred Breeders' and Owners' Association of New Jersey 7.69375%, or in the case of races on a charity racing day 7.40%, 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 3.2% 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 tracks. Notwithstanding the foregoing, for pools where the patron is required to select two or more horses, the permitholder shall distribute as purse money 8.42875%, or in the case of races on a charity racing day 7.90%, of the total contributions and for pools where the patron is required to select three or more horses, the permitholder shall distribute as purse money 10.63375%, or in the case of races on a charity racing day 9.40%, of the total contributions. Notwithstanding the foregoing, for pools where a patron is required to select three or more horses, each permitholder shall retain out of

the 10.63375% or 9.40% to be distributed as purse money a sum deemed necessary by the racing commission, for use by the commission to finance a prerace 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.

(5) 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 .29375% of such total contributions, except that for pools where the patron is required to select two or more horses, the amount shall be .52875%, and for pools where the patron is required to select three or more horses, the amount shall be 1.23375%.

(6) In the case of races on a racing day other than a charity racing day, distribute to the Sire Stakes Program for standardbred horses .05% of such total contributions, except that for pools where the patron is required to select two or more horses, the amount shall be .09%, and for pools where the patron is required to select three or more horses, the amount shall be .21%.

(7) 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) .025% of such total contributions, except that for pools where the patron is required to select two or more horses, the amount shall be .045%, and for pools where the patron is required to select three or more horses, the amount shall be .105%.

Except as otherwise provided by law, no admission or amusement tax, excise tax, license or horse racing fee of any kind shall be assessed or collected from any permitholder 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.

b. In the case of running races:

(1) Where the amount derived from the parimutuel handle, excluding the handle derived from intertrack wagering, does not exceed \$1 million per day based on such contributions accumulated and averaged during the calendar year, the permitholder shall:

(a) 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.1992, c.113 (C.5:5-44.7), or P.L.1993, c.15 (C.5:5-44.8), pay to the commission, at the time and in the manner prescribed by the commission, .30% of so much of the total contributions to all parimutuel pools conducted or made on any and every horse race, except that for

pools where the patron is required to select three or more horses, the permitholder shall pay 1.30% of the total contributions;

(b) Hold and set aside in an account designated as a special trust account 5% of 1% 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).

(c) Retain 9.991%, or in the case of races on a charity racing day 9.85%, of such total contributions for his own uses and purposes. For pools where the patron is required to select two horses, the permitholder shall retain 11.061%, or in the case of races on a charity racing day 10.92%, of the total contributions and for pools where the patron is required to select three or more horses, the permitholder shall retain 13.941%, or in the case of races on a charity racing day 13.33%, of the total contributions. Each permitholder shall contribute out of its 13.941% or 13.33% share of pools, where the patron is required to select three or more horses, a sum deemed necessary by the racing commission, to finance a prerace 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 the commission.

(d) Distribute as purse money and for programs designed to aid the horsemen and the New Jersey Thoroughbred Horseman's Benevolent Association 6.141%, or in the case of races on a charity racing day 6.00%, of such contributions. Notwithstanding the foregoing, for pools where the patron is required to select two horses, the permitholder shall distribute as purse money 7.071%, or in the case of races on a charity racing day 6.93%, of such contributions and for pools where the patron is required to select three or more horses, the permitholder shall distribute as purse money 9.631%, or in the case of races on a charity racing day 9.02%, of the total contributions. Expenditures for programs designed to aid the horsemen and the New Jersey Thoroughbred Horseman's Benevolent Association shall not exceed 2.5% of the sum available for distribution as purse money from all parimutuel pools. 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 Horseman's Benevolent Association and the permitholder. Notwithstanding the foregoing, for pools where a patron is required to select three or more horses, each permitholder shall retain out of the 9.631% or 9.02% to be distributed as purse money a sum deemed necessary by the racing commission, for use

by the commission to finance a prerace 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 the commission.

(e) 80% of 1% of all pools shall be deducted and set aside in a special trust account for the establishment and support by the commission of the thoroughbred breeding industry in New Jersey; to improve purses for closed races; to provide awards for owners and breeders of registered New Jersey bred horses who earn portions of purses in open and closed races at New Jersey race tracks 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 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 (b) of this paragraph.

(f) (Deleted by amendment, P.L.1986, c.19.)

(g) In the case of races on a racing day other than a charity racing day, distribute to the Thoroughbred Breeders' Association of New Jersey .012% of such total contributions, except that for pools where the patron is required to select three or more horses, the amount shall be .052%.

(h) 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) .006% of such total contributions, except that for pools where the patron is required to select three or more horses, the amount shall be .026%.

(i) Notwithstanding the foregoing, for pools where a patron is required to select three or more horses, 50% of 1% of the total contributions shall be held and set aside in the special trust account referred to in subparagraph (e) of this paragraph.

(j) Except as otherwise provided by law, no admission or amusement tax, excise tax, license or horse racing fee of any kind shall be assessed or collected from any permitholder 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.

(2) Where the amount derived from the parimutuel handle, excluding the handle derived from intertrack wagering, exceeds \$1 million per day based on such contributions accumulated and averaged during the calendar year, the permitholder shall:

(a) 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.1992, c.113 (C.5:5-44.7), or P.L.1993, c.15 (C.5:5-44.8), pay to the commission, at the time and in the manner prescribed by the commission, .50% of so much of the total contributions to all parimutuel pools conducted or made on any and every horse race;

(b) Hold and set aside in an account designated as a special trust account 5% of 1% 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).

(c) Retain 9.305%, or in the case of races on a charity racing day 9.07%, of such total contributions for his own uses and purposes. For pools where the patron is required to select two horses, the permitholder shall retain 10.375%, or in the case of races on a charity racing day 10.14%, of the total contributions and for pools where the patron is required to select three or more horses, the permitholder shall retain 13.545%, or in the case of races on a charity racing day 13.31%, of the total contributions. Each permitholder shall contribute out of its 13.545% or 13.31% share of pools, where the patron is required to select three or more horses, a sum deemed necessary by the racing commission, to finance a prerace 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 the commission.

(d) Distribute as purse money and for programs designed to aid the horsemen and the New Jersey Thoroughbred Horseman's Benevolent Association 6.815%, or in the case of races on a charity racing day 6.58%, of such contributions. Notwithstanding the foregoing, for pools where the patron is required to select two horses, the permitholder shall distribute as purse money 7.745%, or in the case of races on a charity racing day 7.51%, of such contributions and for pools where the patron is required to select three or more horses, the permitholder shall distribute as purse money 10.085%, or in the case of races on a charity racing day 9.85%, of the total contributions. Expenditures for programs designed to aid the horsemen and the New Jersey Thoroughbred Horseman's Benevolent Association shall not exceed 2.5% of the sum available for distri-

bution as purse money from all parimutuel pools. 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 Horseman's Benevolent Association and the permitholder. Notwithstanding the foregoing, for pools where a patron is required to select three or more horses, each permitholder shall retain out of the 10.085% or 9.85% to be distributed as purse money a sum deemed necessary by the racing commission, for use by the commission to finance a prerace 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 the commission.

(e) 80% of 1% of all pools shall be deducted and set aside in a special trust account for the establishment and support by the commission of the thoroughbred breeding industry in New Jersey; to improve purses for closed races; to provide awards for owners and breeders of registered New Jersey bred horses who earn portions of purses in open and closed races at New Jersey race tracks 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 awards to New Jersey thoroughbred breeders' associations 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 (b) of this paragraph.

(f) (Deleted by amendment, P.L.1986, c.19.)

(g) 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.

(h) 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.

(i) Notwithstanding the foregoing, for pools where a patron is required to select three or more horses, 49% of 1% of the total contributions shall be held and set aside in the special trust account referred to in subparagraph (e) of this paragraph.

(j) Except as otherwise provided by law, no admission or amusement tax, excise tax, license or horse racing fee of any kind shall be assessed or collected from any permitholder 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.

3. Section 2 of P.L.1984, c.236 (C.5:5-66.1) is amended to read as follows:

C.5:5-66.1 Undistributed deposits.

2. Notwithstanding the provisions of section 46 of P.L.1940, c.17 (C.5:5-66) or any other law to the contrary, a holder of a permit to conduct harness race meetings who operates a racetrack at which harness race meetings were conducted during calendar year 1984 but which were suspended for 30 days or more during that calendar year because of fire, and a holder of a permit to conduct harness race meetings who conducted harness race meetings at the aforementioned racetrack during 1984 and who continues to conduct harness race meetings at that racetrack, shall make disposition of the deposits remaining undistributed pursuant to section 1 of this act as follows:

a. 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.1992, c.113 (C.5:5-44.7), or P.L.1993, c.15 (C.5:5-44.8), pay to the commission, at the time and in the manner prescribed by the commission, .50% of so much of the total contributions to all parimutuel pools conducted or made on any and every horse race;

b. Hold and set aside in an account designated as a special trust account 1.15% 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:

(1) 37% 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;

(2) 55% 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;

(3) 5% thereof for contributions and awards designed to improve and promote the standardbred breeding industry in New Jersey through payment of awards to owners and breeders of New Jersey bred horses which are registered with the Standardbred

Breeders' and Owners' Association of New Jersey and which earn portions of purses in open events on New Jersey tracks, and to owners of stallions posted on the official stallions roster of the Standardbred Breeders' and Owners' Association of New Jersey which sire such registered New Jersey bred money earners;

(4) 3% thereof for other New Jersey horse breeding and promotion conducted by the New Jersey Department of Agriculture.

c. Retain 7.935%, or in the case of races on a charity racing day 7.70%, of so much of such total contributions for his own uses and purposes. Notwithstanding the foregoing, for pools where the patron is required to select two horses, the permit-holder shall retain 8.935%, or in the case of races on a charity racing day 8.70%, of the total contributions and for pools where the patron is required to select three or more horses, the permit-holder shall retain 11.935%, or in the case of races on a charity racing day 11.70%, of the total contributions. The permitholder shall contribute out of its 11.935% or 11.70% share of pools, where the patron is required to select three or more horses, a sum deemed necessary by the Racing 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 the commission.

d. Distribute as purse money and for programs designed to aid the horsemen and the Standardbred Breeders' and Owners' Association of New Jersey 7.7675%, or in the case of races on a charity racing day 7.65%, 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 3.2% 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 tracks. Notwithstanding the foregoing, for pools where the patron is required to select two or more horses, the permitholder shall distribute as purse money 8.7675%, or in the case of races on a charity racing day 8.65%, of the total contributions and for pools where the patron is required to select three or more horses, the permitholder shall distribute as purse money 11.7675%, or in the case of races on a charity racing day 11.65%, of the total contributions. Notwithstanding the foregoing, for pools where a patron is required to select three or more horses, the permitholder shall retain out of the 11.7675% or 11.65% to be distributed as purse money, a sum

deemed necessary by the racing commission, for use by the commission to finance a prerace 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 the commission.

e. 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.

f. 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.

g. 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.

Except as otherwise provided by law, no admission or amusement tax, excise tax, license or horse racing fee of any kind shall be assessed or collected from the permitholder 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.

4. Section 5 of P.L.1982, c.201 (C.5:5-98) is amended to read as follows:

C.5:5-98 Garden State Racetrack.

5. The permitholder shall distribute the sums deposited in parimutuel pools to winners thereof in accordance with section 44 of P.L.1940, c.17 (C.5:5-64) and shall dispose of the deposits remaining undistributed as follows:

a. In the case of harness races:

(1) 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 (C.5:5-88), for the following purposes and no other:

(a) 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;

(b) 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 provided;

(c) 5 1/2% thereof for contributions and awards designed to improve and promote the standardbred breeding industry in New Jersey through payment of awards to owners and breeders of New Jersey bred horses, which are registered with the Standardbred Breeders' and Owners' Association of New Jersey and which earn portions of purses in open events on New Jersey tracks, and to owners of stallions posted on the official stallion roster of the Standardbred Breeders' and Owners' Association of New Jersey, which sire such registered New Jersey bred money earners;

(d) 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 (c) and (d) 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.

(2) 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 permitholder. Notwithstanding the foregoing, for pools where the patron is required to select two or more horses, the permitholder 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 permitholder 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 permitholder 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 the commission.

(3) 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.

(4) 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.

(5) 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.

b. In the case of running races:

(1) Hold and set aside in an account designated as a special trust account 5% of 1% 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).

(2) Distribute as purse money and for programs designed to aid the horsemen and the New Jersey Thoroughbred Horseman's Benevolent 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 Horseman's Benevolent 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 Horseman's Benevolent Association and the permitholder. Notwithstanding the foregoing, for pools where the patron is required to select three or more horses, the permitholder shall distribute as purse money 7.475%, or in the case of races on a charity racing day 7.24%, of the total contributions.

(3) 60% of 1% of all pools shall be deducted and set aside in the special trust account established pursuant to section 46b.(1)(e) and 46b.(2)(e) of P.L.1940, c.17 (C.5:5-66). The commission may, however, reduce this amount for a period of time to be determined by the commission upon a request by the permitholder and a determination by the commission that the payment of that amount would cause extreme financial hardship for the permitholder. In no event shall the commission reduce the amount to less than 10% of 1% of total contributions to all parimutuel pools at running race meetings at the racetrack. The permitholder may

request an extension of the period of reduction or a further reduction or, subsequent to any restoration of the amount specified above, another reduction.

(4) 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.

(5) 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.

For pools where a patron is required to select three or more horses, 50% of 1% of the total contributions shall be held and set aside in the special trust account established pursuant to section 46b.(1)(e) and 46b.(2)(e) of P.L.1940, c.17 (C.5:5-66).

Payment of the sums held and set aside pursuant to paragraphs (1) and (3) 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.1992, c.113 (C.5:5-44.7), or P.L.1993, c.15 (C.5:5-44.8), 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 the distribution and payments required by this section shall constitute revenues of the permitholder. Except as otherwise provided in this section, the permitholder shall not be required to make any payments to the commission or others in connection with contributions to parimutuel pools.

The provisions of this section shall apply each year for 10 years after the commencement of horse race meetings at the Garden State Racetrack. At the end of the 10-year period, the provisions of section 46 of P.L.1940, c.17 (C.5:5-66) concerning the distribution of undistributed deposits shall apply.

5. Section 38 of P.L.1992, c.19 (C.5:5-126) is amended to read as follows:

C.5:5-126 Distribution of amounts resulting from parimutuel pool for out-of-State program.

38. a. If a receiving track which is authorized by the New Jersey Racing Commission to receive the racing program, in full or in part, from an out-of-State sending track pursuant to section 37 of this act is not conducting live racing at the time of receiving the out-of-State races, the amount resulting from the takeout rate shall be distributed as follows:

(1) (Deleted by amendment, P.L.1993, c.353.)

(2) .50% of the parimutuel pool generated at the in-State receiving track shall be deposited as follows:

(a) in the case of an in-State receiving track which conducts harness races, in the special trust account established pursuant to or specified in section 46a.(2) of P.L.1940, c.17 (C.5:5-66), section 2b. of P.L.1984, c.236 (C.5:5-66.1), section 5a.(1) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(a) of P.L.1971, c.137 (C.5:10-7), as appropriate, for use and distribution as provided in section 46a.(2)(a), (b), and (c) of P.L.1940, c.17 (C.5:5-66), section 2b.(1), (2), and (3) of P.L.1984, c.236 (C.5:5-66.1), section 5a.(1)(a), (b), and (c) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(a)(i), (ii), and (iii) of P.L.1971, c.137 (C.5:10-7); and

(b) in the case of an in-State receiving track which conducts running races, in the special trust account established pursuant to or specified in section 46b.(1)(e) or (2)(e) of P.L.1940, c.17 (C.5:5-66), section 5b.(3) of P.L.1982, c.201 (C.5:5-98), or section 7f.(2)(c) of P.L.1971, c.137 (C.5:10-7), as appropriate, for use and distribution as provided therein;

(3) .03% of the parimutuel pool generated at the in-State receiving track shall be paid to the New Jersey Racing Commission and set aside in the special trust account for horse breeding and development for distribution and use as provided in section 5 of P.L.1967, c.40 (C.5:5-88);

(4) on the basis of all races in each program, or if two or more programs are being transmitted simultaneously, on the basis of all races in all such programs running simultaneously, 3.735% of the first \$100,000 of the total pool generated at the in-State receiving track; 5.235% of the total pool from \$100,001 to \$150,000; 5.735% of the total pool from \$150,001 to \$250,000; 6.235% of the total pool from \$250,001 to \$300,000; and, if the amount of the total pool is above \$300,000, 6.485% of the total amount of the pool or the percentage of the parimutuel pool for overnight purses on live

races that the receiving track and horsemen have agreed to by contract, whichever is greater, shall be paid as follows:

(a) in the case of an in-State receiving track which conducts harness races, .1175% of the parimutuel pool to the Standardbred Breeders' and Owners' Association of New Jersey for the administration of a health benefits program for horsemen, and the remaining amount as overnight purse money at the next race meeting at the receiving track, except that if the receiving track is conducting a horse race meeting at the same time as the receipt of the simulcast horse races, the receiving track shall use those sums to supplement overnight purses at that horse race meeting, and for programs designed to aid the horsemen and the Standardbred Breeders' and Owners' Association of New Jersey, as provided in section 46a.(4) of P.L.1940, c.17 (C.5:5-66), section 2d. of P.L.1984, c.236 (C.5:5-66.1), section 5a.(2) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(b) of P.L.1971, c.137 (C.5:10-7), as appropriate; and

(b) in the case of an in-State receiving track which conducts running races, as overnight purse money at the next race meeting at the receiving track, except that if the receiving track is conducting a horse race meeting at the same time as the receipt of the simulcast horse races, the receiving track shall use those sums to supplement overnight purses at that horse race meeting, and for programs designed to aid the horsemen and the New Jersey Thoroughbred Horseman's Benevolent Association, as provided in section 46b.(1)(d) or (2)(d) of P.L.1940, c.17 (C.5:5-66), section 5b.(2) of P.L.1982, c.201 (C.5:5-98), or section 7f.(2)(b) of P.L.1971, c.137 (C.5:10-7), as appropriate;

(5) .02% of the parimutuel pool generated at the in-State receiving track shall be paid as follows:

(a) in the case of an in-State receiving track which conducts harness races, to the Sire Stakes Program for standardbred horses; and

(b) in the case of an in-State receiving track which conducts running races, to the Thoroughbred Breeders' Association of New Jersey;

(6) .01% of the parimutuel pool generated at the in-State receiving track shall be paid to the Backstretch Benevolency Programs Fund created pursuant to P.L.1993, c.15 (C.5:5-44.8); and

(7) the amount remaining after the deduction of the amounts under paragraphs (2), (3), (4), (5), and (6) shall be paid to the receiving track.

b. If a receiving track includes out-of-State races as part of its live racing program in any way, the amount resulting from the takeout rate shall be distributed as follows:

(1) (Deleted by amendment, P.L.1993, c.353.)

(2) .50% of the parimutuel pool generated at the in-State receiving track shall be deposited as follows:

(a) in the case of an in-State receiving track which conducts harness races, in the special trust account established pursuant to or specified in section 46a.(2) of P.L.1940, c.17 (C.5:5-66), section 2b. of P.L.1984, c.236 (C.5:5-66.1), section 5a.(1) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(a) of P.L.1971, c.137 (C.5:10-7), as appropriate, for use and distribution as provided in section 46a.(2)(a), (b), and (c) of P.L.1940, c.17 (C.5:5-66), section 2b.(1), (2), and (3) of P.L.1984, c.236 (C.5:5-66.1), section 5a.(1)(a), (b), and (c) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(a)(i), (ii), and (iii) of P.L.1971, c.137 (C.5:10-7); and

(b) in the case of an in-State receiving track which conducts running races, in the special trust account established pursuant to or specified in section 46b.(1)(e) or (2)(e) of P.L.1940, c.17 (C.5:5-66), section 5b.(3) of P.L.1982, c.201 (C.5:5-98), or section 7f.(2)(c) of P.L.1971, c.137 (C.5:10-7), as appropriate, for use and distribution as provided therein;

(3) .03% of the parimutuel pool generated at the in-State receiving track shall be paid to the New Jersey Racing Commission and set aside in the special trust account for horse breeding and development for distribution and use as provided in section 5 of P.L.1967, c.40 (C.5:5-88);

(4) 6.235% of the parimutuel pool generated at the in-State receiving track or the percentage of the parimutuel pool for overnight purses on live races that the racetrack and horsemen have agreed to by contract, whichever is greater, shall be paid as follows:

(a) in the case of an in-State receiving track which conducts harness races, .1175% of the parimutuel pool to the Standardbred Breeders' and Owners' Association of New Jersey for the administration of a health benefits program for horsemen, and the remaining amount as overnight purse money at the current race meeting at the receiving track and for programs designed to aid the horsemen and the Standardbred Breeders' and Owners' Association of New Jersey, as provided in section 46a.(4) of P.L.1940, c.17 (C.5:5-66), section 2d. of P.L.1984, c.236 (C.5:5-66.1), section 5a.(2) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(b) of P.L.1971, c.137 (C.5:10-7), as appropriate; and

(b) in the case of an in-State receiving track which conducts running races, as overnight purse money at the current race meeting at the receiving track and for programs designed to aid the horsemen

and the New Jersey Thoroughbred Horseman's Benevolent Association, as provided in section 46b.(1)(d) or (2)(d) of P.L.1940, c.17 (C.5:5-66), section 5b.(2) of P.L.1982, c.201 (C.5:5-98), or section 7f.(2)(b) of P.L.1971, c.137 (C.5:10-7), as appropriate;

(5) .02% of the parimutuel pool generated at the in-State receiving track shall be paid as follows:

(a) in the case of an in-State receiving track which conducts harness races, to the Sire Stakes Program for standardbred horses; and

(b) in the case of an in-State receiving track which conducts running races, to the Thoroughbred Breeders' Association of New Jersey;

(6) .01% of the parimutuel pool generated at the in-State receiving track shall be paid to the Backstretch Benevolency Programs Fund created pursuant to P.L.1993, c.15 (C.5:5-44.8); and

(7) the amount remaining after the deduction of the amounts under paragraphs (2), (3), (4), (5), and (6) shall be paid to the receiving track.

c. All breakage moneys and outstanding parimutuel ticket moneys resulting from the wagering at the receiving track on the additional out-of-State simulcast races authorized by section 37 shall be divided as follows:

(1) 50% shall be paid to the receiving track; and

(2) 50% shall be paid as follows:

(a) in the case of an in-State receiving track which conducts harness races, as overnight purse money at the receiving track and for programs designed to aid the horsemen and the Standardbred Breeders' and Owners' Association of New Jersey, as provided in section 46a.(4) of P.L.1940, c.17 (C.5:5-66), section 2d. of P.L.1984, c.236 (C.5:5-66.1), section 5a.(2) of P.L.1982, c.201 (C.5:5-98), or section 7f.(1)(b) of P.L.1971, c.137 (C.5:10-7), as appropriate; and

(b) in the case of an in-State receiving track which conducts running races, as overnight purse money at the receiving track and for programs designed to aid the horsemen and the New Jersey Thoroughbred Horseman's Benevolent Association, as provided in section 46b.(1)(d) or (2)(d) of P.L.1940, c.17 (C.5:5-66), section 5b.(2) of P.L.1982, c.201 (C.5:5-98), or section 7f.(2)(b) of P.L.1971, c.137 (C.5:10-7), as appropriate.

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

C.5:10-7 Authority race 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 (1) 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, and (2) for any other project which is set forth in paragraph (5) of subsection a. of section 6 of P.L.1971, c.137 (C.5:10-6), and which was previously operated by a permitholder other than the authority, racing days shall be limited, in type of racing and amount of days, to those allotted by the Racing Commission to the prior permitholder for the year 1985, as of December 13, 1984; except that the authority may apply to the Racing Commission for an extension of the number and type of racing days pursuant to section 2 of P.L.1984, c.247 (C.5:5-43.1).

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 for contributions and awards designed to improve and promote the standardbred breeding industry in New Jersey through payment of awards to owners and breeders of New Jersey bred horses, which are registered with the Standardbred Breeders' and Owners' Association of New Jersey and which earn portions of purses in open events on New Jersey tracks, and to owners of stallions posted on the official stallion roster of the

Standardbred Breeders' and Owners' Association of New Jersey, which sire such registered New Jersey bred money earners;

(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 prerace 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 5% of 1% 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 Horseman's Benevolent 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 Horseman's Benevolent 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 Horseman's Benevolent 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) 10% of 1% of all pools shall be deducted and set aside in the special trust account established pursuant to section 46b.(1)(e) and 46b.(2)(e) of P.L.1940, c.17 (C.5:5-66).

(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.

For pools where a patron is required to select three or more horses, 50% of 1% of the total contributions shall be held and set aside in that special trust account.

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.1992, c.113 (C.5:5-44.7), or P.L.1993, c.15 (C.5:5-44.8), 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 subsection 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, 50% of those sums shall be paid to the Racing Commission;

(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 permitholders. 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.

7. This act shall take effect immediately.

Approved December 30, 1993.

CHAPTER 354

AN ACT concerning certain retirement benefits under the State Police Retirement System of New Jersey and amending P.L.1965, c.89.

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

1. Section 8 of P.L.1965, c.89 (C.53:5A-8) is amended to read as follows:

C.53:5A-8 Retirement for age and service; benefits.

8. a. The Legislature finds and declares that the public health, safety and welfare require the ongoing health and fitness of all

members of the New Jersey State Police so that they may safely and efficiently protect the public. The Legislature further finds and declares that such continued health and fitness cannot be determined except with reference to age, and therefore finds and concludes that retirement of all members of the State Police at age 55, except as provided for in subsection c. of this section, shall constitute a bona fide occupational qualification which is reasonably necessary to the normal operation of the State Police, which qualification the Legislature hereby promulgates and establishes.

b. Any member of the retirement system may retire on a service retirement allowance upon the completion of at least 20 years of creditable service as a State policeman, which includes the creditable service of those members appointed to the Division of State Police under section 3 of P.L.1983, c.403 (C.39:2-9.3). Upon the filing of a written and duly executed application with the retirement system, setting forth at what time, not less than one month subsequent to the filing thereof, he desires to be retired, any such member retiring for service shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his aggregate contributions; and

(2) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 50% of his final compensation.

c. Except for the Superintendent of State Police, any member of the retirement system including a member appointed to the State Police under section 3 of P.L.1983, c.403 (C.39:2-9.3), who has attained the age of 55 years, shall be retired forthwith on the first day of the next calendar month following the effective date of this 1985 amendatory act. Any member of the retirement system so retired shall receive a service retirement allowance pursuant to this section or section 27 of P.L.1965, c.89 (C.53:5A-27), as appropriate.

d. Any member of the retirement system as of the effective date of this act who is required to retire pursuant to subsection c. of this section shall be entitled to continued health benefits coverage during retirement as provided in the "New Jersey State Health Benefits Program Act," P.L.1961, c.49 (C.52:14-17.25 et seq.). Notwithstanding the provisions of section 8 of P.L.1961, c.49 (C.52:14-17.32), the State shall pay the premium or periodic charge for the benefits provided to a member retiring under subsection c. of this section with fewer than 25 years of service

credited in the retirement system, and his dependents covered under the program, but not including survivors.

e. Any member of the retirement system as of the effective date of this act who is required to retire pursuant to subsection c. of this section shall be entitled to the retirement allowance provided for by subsection b. of this section, notwithstanding that the member shall have fewer than 20 years' creditable service.

f. Any member of the retirement system as of the effective date of P.L.1985, c.175 who is required to retire pursuant to subsection c. of this section and who has more than 20 but less than 25 years of creditable service at the time of retirement shall be entitled to the retirement allowance provided for by subsection b. of this section plus 3% of his final compensation multiplied by the number of years of creditable service over 20 but not over 25.

g. Upon the receipt of proper proofs of the death of a member who has retired on a service retirement allowance, there shall be paid to the member's beneficiary an amount equal to one-half of the final compensation received by the member.

2. Section 9 of P.L.1965, c.89 (C.53:5A-9) is amended to read as follows:

C.53:5A-9 Retirement on ordinary disability retirement allowance; payments upon death.

9. a. Upon the written application by a member in service, by one acting in his behalf or by the State, any member, under 55 years of age, who has had four or more years of creditable service as a State policeman or four or more years of creditable service as a person formerly employed by the Division of Motor Vehicles or the Division of State Police prior to appointment as provided in section 3 of P.L.1983, c.403 (C.39:2-9.3), may be retired, not less than one month next following the date of filing such application with the retirement system, on an ordinary disability retirement allowance; provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the performance of his usual duty and of any other available duty in the Division of State Police which the Superintendent of State Police is willing to assign to him and that such incapacity is likely to be permanent and of such an extent that he should be retired.

b. Upon retirement for ordinary disability, a member shall receive an ordinary disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his aggregate contributions; and

(2) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 1 1/2% of final compensation multiplied by his number of years of creditable service, but in no event shall the total allowance be less than 40% of final compensation.

c. Notwithstanding the provisions of subsection b. of this section, a member of the retirement system who has more than 20 but less than 25 years of creditable service and who is required to retire pursuant to subsection a. of this section upon application by the State made on or after October 1, 1988, shall receive an ordinary disability retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of the member's aggregate contributions; and

(2) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of 50% of final compensation plus 3% of final compensation multiplied by the number of years of creditable service over 20 but not over 25.

Any increase in the disability retirement allowance of a member who was required to retire on or after October 1, 1988 and prior to the effective date of this amendatory and supplementary act, P.L.1989, c.308, shall be retroactive to the date of retirement.

d. Upon the receipt of proper proofs of the death of a member who has retired on an ordinary disability retirement allowance, there shall be paid to the member's beneficiary an amount equal to three and one-half times the final compensation received by the member in the last year of creditable service; provided, however, that if such death shall occur after the member shall have attained 55 years of age, the amount payable shall equal one-half of such compensation instead of three and one-half times such compensation.

C.53:5A-8.2 Applicability of act.

3. a. The increase in retirement allowances under the amendatory provisions of sections 1 and 2 of this act, P.L.1993, c.354 shall be applicable to eligible persons who shall have retired under section 8 or 9 of P.L.1965, c. 89 (C.53:5A-8 or C.53:5A-9) on or after January 1, 1992 and prior to the effective date of this act, but shall be payable only with respect to amounts of those allowances paid on and after the first day of the month following the effective date of this act.

b. The provisions of section 7 of P.L.1969, c.169 (C.43:3B-8) shall not apply to section 8 or section 9 of P.L.1965, c.89 (C.53:5A-8 or C.53:5A-9) as amended by P.L.1993, c.354, and the annual cost of living adjustment received by retirants and beneficiaries under P.L.1958, c.143 (C.43:3B-1 et seq.) as amended and supplemented by P.L.1969, c.169 shall be calculated as of the date of retirement of the member of the retirement system.

4. This act shall take effect immediately.

Approved December 30, 1993.

CHAPTER 355

AN ACT concerning food establishments and supplementing P.L.1968, c.105 (C.24:16B-1 et seq.).

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

C.24:16B-61.1 Donations of certain meat to food banks, providers of food to needy.

1. A food bank, as defined in section 2 of P.L.1982, c.178 (C.24:4A-2), or a nonprofit organization that provides food to the needy, may accept the donation of and serve the meat of wild game animals, killed during the hunting season, if the following requirements are met:

- a. The meat is prepared and packaged pursuant to the "Wholesome Meat Act," Pub. L. 90-201 (21 U.S.C. §601 et seq.); and
- b. The package or container in which the meat is transported is labeled as "not for sale."

2. This act shall take effect immediately.

Approved December 30, 1993.

CHAPTER 356

AN ACT appropriating moneys from the "Natural Resources Fund" for the purpose of planning, design, reconstruction, restoration and rehabilitation of certain dams.

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

1. There is appropriated to the Department of Environmental Protection from the "Natural Resources Fund," created pursuant to the "Natural Resources Bond Act of 1980," P.L.1980, c.70, the sum of \$2,450,000 for dam restoration for State projects and for matching grants to local governments for the following projects: New Street Reservoir Dam (Passaic Valley Water Commission); DeVoe Lake Dam (Borough of Spotswood); Mountain Lake Dam (Borough of Mountain Lakes); Echo Lake Dam Intake and Spillway (City of Newark); Wildwood Lake Dam (Borough of Mountain Lakes); Sylvan Lake Dam (Township of Burlington); and for administrative costs.

2. From the sum appropriated above, each individual project is eligible for a grant of up to 50% of the cost of the project, up to a maximum of \$1,000,000. Any unexpended funds from the projects above shall be used to fund the following State-owned high hazard dams; Lake Carasaljo Dam (Lakewood Township), Cranberry Lake Dam (Andover Township), and Green Turtle Pond Dam (West Milford Township). Any unexpended funds remaining after completion of dam restoration projects authorized herein shall be used by the department to fund the repair of other high priority, high hazard dams.

3. Any unexpended funds from previous appropriation bills for dam restoration projects may be used to fund dam restoration projects identified in sections 1 and 2 above.

4. The expenditures of sums appropriated by this act are subject to the provisions and conditions of P.L.1980, c.70.

5. This act shall take effect immediately.

Approved December 30, 1993.

CHAPTER 357

AN ACT concerning the appointment of an independent prosecutor.

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

1. The Legislature finds and declares that:

a. Allegations of possible criminal misconduct continue to be raised with regard to the awarding in 1992 of millions of dollars in State aid to the Township of Lyndhurst, Bergen County;

b. Despite investigations by both the New Jersey Board of Education and the State Commission of Investigation which revealed irregularities and improprieties in the awarding of State aid to Lyndhurst, responsibility for the channeling of these funds to Lyndhurst has not been determined;

c. As this case has raised questions concerning the actions by local officials, legislators, past and present members of the Governor's Office and past and present officials of the Department of Education, the Department of Community Affairs, the Department of the Treasury and the Department of Law and Public Safety, investigation of this matter by the Attorney General would represent a political conflict of interest;

d. While recognizing that the Office of the Attorney General is the usual and proper agency to investigate and if necessary, prosecute allegations of criminal misconduct by government officials, the alleged facts surrounding the Lyndhurst controversy are of such a unique nature that in this limited instance, the authority of the Attorney General should be bypassed and an independent counsel appointed;

e. In order to restore public confidence in the fairness and impartiality of the criminal justice system, it is in the public interest that an independent counsel be appointed to conduct an investigation into the circumstances surrounding the awarding of State aid to Lyndhurst.

2. a. Within 30 days of the effective date of this act, the Governor shall appoint a person with appropriate experience as independent counsel to investigate the Lyndhurst State aid controversy. The Governor shall not appoint as independent counsel any person who holds any public office in this State.

b. In appointing the independent counsel, the Governor shall file with the Superior Court a document outlining the scope of the independent counsel's jurisdiction. In doing so, the Governor shall assure that the independent counsel has adequate authority to fully investigate and prosecute all aspects of the Lyndhurst controversy.

3. a. Notwithstanding any other provision of law to the contrary, an independent counsel appointed pursuant to the provisions of this act shall have, with respect to all matters in the independent counsel's jurisdiction, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Attorney General. Such investigative and prosecutorial functions and powers shall include:

(1) Conducting proceedings before the grand jury and other investigations;

(2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the independent counsel considers necessary;

(3) Appealing any decision of a court in any case or proceeding in which the independent counsel participates in an official capacity;

(4) Reviewing all documentary evidence available from any source;

(5) Determining whether to contest the assertion of any testimonial privilege;

(6) Making application to the Superior Court for a grant of immunity to any witness or for warrants, subpoenas or other court orders; and

(7) Initiating and conducting prosecutions, framing and signing indictments, filing information, and handling all aspects of any case, in the name of the State of New Jersey.

b. The independent counsel appointed pursuant to this act shall receive compensation at the per diem rate established by the Supreme Court for retired Superior Court judges serving on a recall basis.

c. The independent counsel may request assistance from the Department of Law and Public Safety in carrying out the functions of the independent counsel, and the department shall provide that assistance, which may include access to any records, files, or other material relevant to matters within the independent counsel's jurisdiction and the use of the resources and personnel necessary to perform such duties.

d. The Department of Law and Public Safety shall pay all costs relating to the establishment and operation of the office of independent counsel.

e. The independent counsel shall where possible comply with the written or other established policies of the Department of Law and Public Safety with respect to the enforcement of the criminal laws.

4. The independent counsel appointed under this act may be removed from office by the Governor only for good cause, physical

disability, mental incapacity, or any other condition that substantially impairs the performance of the independent counsel's duties.

5. The appointment of the independent counsel shall terminate when:

a. The independent counsel notifies the Attorney General that the investigation of all matters within the jurisdiction of the independent counsel and any resulting prosecutions have been completed or so substantially completed that it would be appropriate for the Department of Law and Public Safety to complete such investigations and prosecutions; and

b. The independent counsel has filed a final report with the Legislature with regard to the investigation.

6. This act shall take effect immediately.

Approved December 30, 1994.

CHAPTER 358

AN ACT to provide loan guarantees for manufacturers and distributors of luxury boats and marine products in the State and supplementing chapter 1B of Title 34 of the Revised Statutes.

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

C.34:1B-7.28 Short title.

1. This act shall be known and may be cited as the "New Jersey Boat Industry Loan Guarantee Fund Act."

C.34:1B-7.29 Findings, declarations.

2. The Legislature finds and declares that the regional and national economic downturn which began in late 1989 continues to negatively affect the State, resulting in an alarming number of layoffs in all sectors of the economy; that during this period, one of the hardest hit sectors of the New Jersey economy has been its boat building industry, especially that portion of the industry involved in the construction and distribution of luxury boats; that the reason for this slide in the luxury boat building industry, in addition to the slumping regional economy, has been the drastic

fiscal impact of the 10% federal excise tax on the sale of new boats costing over \$100,000, imposed in January 1991; that this federal excise tax has further exacerbated these negative economic effects, resulting in a 75% reduction in new boat sales and a similar reduction in the boat building labor force; that while the repeal of the federal excise tax on luxury boats is expected to provide New Jersey's boat building industry with a necessary spark, the industry will still need additional financial assistance to fully recover, having been drained over the past three years of the liquidity necessary to meet payrolls and purchase materials needed to substantially increase production and respond to a three year pent-up demand; that it is in the public interest to establish a program administered by the New Jersey Economic Development Authority designed to provide loan guarantees to manufacturers, assemblers and distributors of luxury boats in New Jersey; and that such a program should be developed through the use of moneys made available for such purposes pursuant to the "Economic Recovery Fund Act," P.L.1992, c.16 (C.34:1B-7.10 et seq.), and any other moneys made available to the authority.

C.34:1B-7.30 Definitions.

3. As used in this act:

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Boat" means a vessel or watercraft, other than a personal watercraft or sea plane on the water, used or capable of being used as a means of transportation on water, which may be temporarily or permanently equipped with machinery for propulsion.

"Boat manufacturer or distributor" means an independently owned and operated business which: (1) manufactures, assembles or distributes boats in this State the retail value of which is at least \$100,000 each, or manufactures or provides marine products in this State for such boats and (2) prior to January 1, 1991, manufactured, assembled or distributed boats in this State the retail value of which was at least \$100,000 each, or manufactured or provided marine products in this State for such boats.

"Cost" means the expenses incurred in connection with the operation of a boat manufacturer or distributor, which can be reasonably expected to be recovered through the financing of the operation, and which shall include, but need not be limited to, the costs of planning, fixed assets, materials, working capital, floor

plan funding and any other costs determined by the authority to be necessary to carry out the purposes of this act.

“Fixed assets” means any real property, interests in real property, plant, equipment, and other assets commonly accepted as fixed assets.

“Marine products” means those parts and materials utilized in the design, construction and maintenance of boats, which shall include, but need not be limited to, parts and materials used in boat engines, generators, transmissions, exhaust systems and electrical, plumbing, heating and cooling systems, except that marine products shall not include any oil or oil-based products or materials.

“Participating bank” means a State- or federally-chartered bank, savings bank or savings and loan association, or a bank organized under the laws of a foreign government, deemed eligible by the authority for participation in the program.

“Program” means the “New Jersey Boat Industry Loan Guarantee Program” established by the authority pursuant to section 4 of this act.

“Working capital” means those liquid capital assets other than fixed assets.

C.34:1B-7.31 “New Jersey Boat Industry Loan Guarantee Program” established.

4. The New Jersey Economic Development Authority shall establish a “New Jersey Boat Industry Loan Guarantee Program” to provide loan guarantees for boat manufacturers or distributors in the State.

C.34:1B-7.32 “New Jersey Boat Industry Loan Guarantee Fund.”

5. a. To implement the program, the authority shall establish and maintain a special revolving fund to be known as the “New Jersey Boat Industry Loan Guarantee Fund,” hereinafter the “guarantee fund,” which shall be credited with: (1) an amount from the Economic Recovery Fund established pursuant to section 3 of P.L.1992, c.16 (C.34:1B-7.12) which the authority determines is necessary to effectively implement the program, within the limits of funding available from the Economic Recovery Fund; (2) any moneys that shall be received by the authority from the repayment of the moneys in the guarantee fund used to provide loan guarantees pursuant to this act and interest thereon; and (3) other moneys of the authority, including but not limited to, any moneys available from other business assistance programs administered by the authority which it is authorized and determines to deposit therein.

b. The authority shall use the moneys in the guarantee fund to: (1) enter, within six years of the effective date of this act, into

loan guarantee agreements with participating banks and boat manufacturers or distributors qualified pursuant to subsection d. of this section, to guarantee up to 90 percent of the loans or lines of credit provided by participating banks, in accordance with section 7 of this act; and (2) defray the administrative expenses of the authority in carrying out the purposes and provisions of this act.

c. Applications for loan guarantees under this act shall be submitted by boat manufacturers or distributors in a form and manner determined by the authority. Upon application by a boat manufacturer or distributor for a loan guarantee pursuant to this section, the authority, in consultation with the Office of Labor Statistics in the Division of Planning and Research of the Department of Labor, shall determine whether the loan for which the application for a loan guarantee has been submitted is expected to result in a net increase in the number of jobs provided to New Jersey residents in the State, which may include the re-employment of personnel temporarily discharged by the boat manufacturer or distributor during the years 1990 through 1993, inclusive. If it is determined by the authority that the loan is likely to meet this goal, the authority shall certify that the boat manufacturer or distributor is eligible to receive a loan guarantee pursuant to this section.

d. In evaluating a loan guarantee application submitted by a boat manufacturer or distributor and certified as eligible by the authority pursuant to subsection c. of this section, the authority shall place primary emphasis on the applicant's record of profitability and financial stability prior to January 1, 1991, and on projections by the applicant, including the data and assumptions forming the basis thereof, of recovered profitability and financial stability over the term of the loan guarantee. The portion of the direct loans or lines of credit provided by participating banks may be guaranteed by the authority pursuant to section 7 of this act only if an eligible boat manufacturer or distributor has been qualified therefor by demonstrating to the satisfaction of the authority that the eligible boat manufacturer or distributor has the ability, reputation and credit-worthiness necessary to reach a market and generate sales.

e. No loan guarantee entered into pursuant to this section shall be for a period of more than five years. Upon expiration of the period of all loan guarantees entered into pursuant to this act, all repayments, and interest thereon, and all moneys remaining in the guarantee fund shall be credited to and deposited in the "Economic Recovery Fund," established pursuant to section 3 of P.L.1992, c.16 (C.34:1B-7.12) for any of the purposes thereof.

f. Moneys in the guarantee fund may be invested in such obligations as the authority may approve and, except as otherwise provided in subsection e. of this section, net earnings received from the investment or deposit of moneys in the guarantee fund by the authority shall be redeposited in the guarantee fund for use for the purposes of this act.

C.34:1B-7.33 Establishment of reserves.

6. The authority shall establish sufficient reserves and liquid reserves to provide a sufficient and actuarially sound basis for its pledges contained in any loan guarantee agreement entered into pursuant to this act.

C.34:1B-7.34 Agreements.

7. The authority shall enter into agreements with participating banks and boat manufacturers or distributors qualified pursuant to subsection d. of section 5 of this act to use the moneys from the guarantee fund to guarantee direct loans or revolving lines of credit provided by participating banks to finance the costs of such qualified boat manufacturers or distributors. The agreements shall provide that the loans or lines of credit for financing the costs of eligible boat manufacturers or distributors shall come from participating banks. The agreements shall also provide for any other terms or conditions which the authority and the participating banks stipulate to as being necessary or desirable to make loans, establish and extend lines of credit, guarantee loans and otherwise effectuate the purpose of the program.

C.34:1B-7.35 Report to Governor, Legislature.

8. Within fifteen months following the effective date of this act, and on or before February 15 of each succeeding year in which a loan guarantee agreement entered into under this act is in effect, the authority shall prepare a report on the program. The report may be issued separately, or in combination with the reports required by law on financial assistance to boat manufacturers or distributors in this State, and shall include, but need not be limited to, a description of the demand for the program from eligible and qualified boat manufacturers and distributors and participating banks, the efforts made by the authority to promote the program, the total amount of loan guarantees approved by the authority pursuant to the program and an assessment of the effectiveness of the program in meeting the goals of this act. The authority shall submit its report to the Governor and the Legisla-

ture, including therein any recommendations for legislation to improve the effectiveness of the program.

C.34:1B-7.36 Rules, regulations.

9. 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. In developing procedures and forms to be used in connection with the application for and approval of loan guarantees pursuant to this act, the authority shall consider the special needs and problems of boat manufacturers and distributors in the State.

10. This act shall take effect immediately.

Approved December 30, 1993.

CHAPTER 359

AN ACT concerning certain appeals of permit decisions, and supplementing the "Administrative Procedure Act, P.L.1968, c.410 (C.52:14B-1 et seq.).

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

C.52:14B-3.1 Findings, declarations.

1. The Legislature finds and declares that:

a. Under the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) all interested persons are afforded reasonable opportunity to submit data, views or arguments, orally or in writing, during any proceedings involving a permit decision;

b. Persons who have particularized property interests or who are directly affected by a permitting decision have constitutional and statutory rights and remedies;

c. To allow State agencies without specific statutory authorization to promulgate rules and regulations which afford third parties, who have no particularized property interests or who are not directly affected by a permitting decision, to appeal that decision would give rise to a chaotic unpredictability and instability

that would be most disconcerting to New Jersey's business climate and would cripple economic development in our State; and

d. It is, therefore, altogether fitting and proper, and within the public interest, to prohibit State agencies from promulgating rules and regulations which would allow third party appeals of permit decisions unless specifically authorized to do so by federal law or State statute.

C.52:14B-3.2 Definitions.

2. As used in this act:

"Permit decision" means a decision by a State agency to grant, deny, modify, suspend or revoke any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"State agency" or "agency" means and includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, councils, authorities, offices or officers within any such departments which are authorized to grant, deny, modify, suspend, or revoke a license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"Third party" means any person other than:

a. An applicant for any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law;

b. A State agency; or

c. A person who has particularized property interest sufficient to require a hearing on constitutional or statutory grounds.

C.52:14B-3.3 Appeal of permit decision by third party.

3. a. Except as otherwise required by federal law or by a statute that specifically allows a third party to appeal a permit decision, a State agency shall not promulgate any rule or regulation that would allow a third party to appeal a permit decision.

b. Nothing herein shall be construed as abrogating or otherwise limiting any person's constitutional and statutory rights to appeal a permit decision.

4. This act shall take effect immediately.

Approved December 30, 1993.

CHAPTER 360

AN ACT concerning the power of fiduciaries to divide trusts into two or more separate trusts and amending N.J.S.3B:14-23.

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

1. N.J.S.3B:14-23 is amended to read as follows:

Powers.

3B:14-23. Powers. In the absence of contrary or limiting provisions in the judgment or order appointing a fiduciary, in the will, deed or other instrument or in a subsequent court judgment or order, every fiduciary shall, in the exercise of good faith and reasonable discretion, have the power:

- a. To accept additions to any estate or trust from sources other than the estate of the decedent, minor, mental incompetent or the settler of a trust;

- b. To acquire the remaining undivided interest in an estate or trust asset in which the fiduciary, in his fiduciary capacity, holds an undivided interest;

- c. To invest and reinvest assets of the estate or trust under the provisions of the will, deed or other instrument or as otherwise provided by law and to exchange assets for investments and other property upon terms as may seem advisable to the fiduciary;

- d. To effect and keep in force fire, rent, title, liability, casualty or other insurance to protect the property of the estate or trust and to protect the fiduciary;

- e. With respect to any property or any interest therein owned by an estate or trust, including any real property belonging to the fiduciary's decedent at death, except where the property or any interest therein is specifically disposed of:

- (1) To take possession of and manage the property and to collect the rents therefrom, and pay taxes, mortgage interest and other charges against the property;

- (2) To sell the property at public or private sale, and on terms as in the opinion of the fiduciary shall be most advantageous to those interested therein;

- (3) With respect to fiduciaries other than a trustee, to lease the property for a term not exceeding three years, and in the case of a trustee to lease the property for a term not exceeding 10 years, even though the term extends beyond the duration of the trust,

and in either case including the right to explore for and remove mineral or other natural resources, and in connection with mineral leases to enter into pooling and unitization agreements;

(4) To mortgage the property;

(5) To grant easements to adjoining owners and utilities;

(6) A fiduciary acting under a will may exercise any of the powers granted by this subsection e. notwithstanding the effects upon the will of the birth of a child after its execution;

f. To make repairs to the property of the estate or trust for the purpose of preserving the property or rendering it rentable or saleable;

g. To grant options for the sale of any property of the estate or trust for a period not exceeding six months;

h. With respect to any mortgage held by the estate or trust to continue it upon and after maturity, with or without renewal or extension, upon terms as may seem advisable to the fiduciary and to foreclose, as an incident to collection of any bond or note, any mortgage and purchase the mortgaged property or acquire the property by deed from the mortgagor in lieu of foreclosure;

i. In the case of the survivor or survivors of two or more fiduciaries to administer the estate or trust without the appointment of a successor to the fiduciary or fiduciaries who have ceased to act and to exercise or perform all of the powers given unless contrary to the express provision of the will, deed or other instrument;

j. As a new, alternate, successor, substitute or additional fiduciary or fiduciaries, to have or succeed to all of the powers, duties and discretion of the original fiduciary or fiduciaries, with respect to the estate or trust, as were given to the original fiduciary or fiduciaries named in or appointed by a will, deed or other instrument, unless the exercise of the powers, duties or discretion of the original fiduciary or fiduciaries is expressly prohibited by the will, deed or other instrument to any successor or substitute fiduciary or fiduciaries;

k. Where there are three or more fiduciaries qualified to act, to take any action with respect to the estate or trust which a majority of the fiduciaries shall determine; a fiduciary who fails to act through absence or disability, or a dissenting fiduciary who joins in carrying out the decision of a majority of the fiduciaries if his dissent is expressed promptly in writing to his cofiduciaries, shall not be liable for the consequences of any majority decision, provided that liability for failure to join in administering the trust or to prevent a breach of trust may not thus be avoided;

l. To employ and compensate attorneys for services rendered to the estate or trust or to a fiduciary in the performance of his duties;

m. To compromise, contest or otherwise settle any claim in favor of the estate, trust or fiduciary or in favor of third persons and against the estate, trust or fiduciary, including transfer inheritance, estate, income and other taxes;

n. To vote in person or by proxy, discretionary or otherwise, shares of stock or other securities held by the estate or trust;

o. To pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, bonds, debentures or other corporate securities in the hands of a fiduciary, whenever the payments may be legally enforceable against the fiduciary or any property of the estate or trust or the fiduciary deems payment expedient and for the best interests of the estate or trust;

p. To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers or liquidations, and to consent to corporate sales or leases and encumbrances, and, in the exercise of those powers, the fiduciary is authorized to deposit stocks, bonds or other securities with any custodian, agent, protective or other similar committee, or trustee under a voting trust agreement, under terms and conditions respecting the deposit thereof as the fiduciary may approve;

q. To execute and deliver agreements, assignments, bills of sale, contracts, deeds, notes, receipts and any other instrument necessary or appropriate for the administration of the estate or trust;

r. In the case of a trustee:

(1) to hold two or more trusts or parts of trusts created by the same instrument, as an undivided whole, without separation as between the trusts or parts of the trusts, provided that separate trusts or parts of trusts shall have undivided interests and provided further that no holding shall defer the vesting of any estate in possession or otherwise;

(2) To divide a trust, before or after its initial funding, into two or more separate trusts, provided that such division will not materially impair the accomplishment of the trust purposes or the interests of any beneficiary. Distributions provided for by the governing instrument may be made from one or more of the separate trusts;

s. To distribute in kind any property of the estate or trust as provided in article 1 of chapter 23 of this title;

t. To join with the surviving spouse, the executor of his or her will or the administrator of his or her estate in the execution and filing of a joint income tax return for any period prior to the death

of a decedent for which he has not filed a return or a gift tax return on gifts made by the decedent's surviving spouse, and to consent to treat the gifts as being made one-half by the decedent, for any period prior to a decedent's death, and to pay taxes thereon as are chargeable to the decedent;

u. To acquire or dispose of an asset, including real or personal property in this or another State, for cash or on credit, at public or private sale, and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

v. To continue any business constituting the whole or any part of the estate for so long a period of time as the fiduciary may deem advisable and advantageous for the estate and persons interested therein;

w. In the case of a qualified bank as defined in section 1 of P.L.1948, c.67 (C.17:9A-1), to purchase, sell and maintain for any fiduciary account, securities issued by an investment company which is operated and maintained in accordance with the "Investment Company Act of 1940," 15 U.S.C. §80a-1 et seq., and for which the qualified bank is providing services as an investment advisor, investment manager, custodian or otherwise, provided that:

(1) the investment is otherwise in accordance with applicable fiduciary standards;

(2) unless the investment of trust assets in an investment company to which the qualified bank provides services as an investment manager, custodian or otherwise is provided for by the instrument creating the fiduciary account:

(a) all current income beneficiaries are provided with 30 days' written notice of the qualified bank's intent to so invest the assets prior to the initial investment; and

(b) the qualified bank does not receive written objection thereto from any such beneficiary within the 30 day period; and

(3) unless otherwise specifically permitted by the trust instrument creating the fiduciary account:

(a) the investment advisory fees, commissions or similar fees to which the qualified bank is entitled as fiduciary shall be reduced by the amount of any investment advisory fees, commissions or similar fees paid to the qualified bank by the investment company; or

(b) the investment advisory fees, commissions or similar fees paid to the qualified bank by the investment company are received in lieu of any investment advisory fees, commissions or similar fees that the qualified bank would otherwise be entitled to receive for the investment management of the fiduciary account.

Such investment shall not be deemed self-dealing or a fiduciary conflict; nor shall the fact that other beneficiaries of fiduciary accounts of the qualified bank have similar investments be deemed to be an improper commingling of assets by the qualified bank.

For purposes of this subsection, "fiduciary account" shall include a trust, estate, agency or other account in which funds, property, or both, are held by a qualified bank pursuant to section 28 of P.L.1948, c.67 (C.17:9A-28), or an account for which a qualified bank acts as investment advisor or manager; and

x. The powers set forth in this section are in addition to any other powers granted by law, and by a will, deed or other instrument.

2. This act shall take effect immediately and shall apply to all trusts, regardless of whether they are funded.

Approved December 30, 1993.

CHAPTER 361

AN ACT concerning the payment of certain fees for permits issued by the Department of Environmental Protection, and supplementing chapter 1D of Title 13 of the Revised Statutes.

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

C.13:1D-120 Findings, declarations.

1. The Legislature finds and declares that:

a. It is within the public interest to promote economic growth, to encourage and foster the development and establishment of new industries and businesses, to champion and expedite the expansion, modernization and diversification of existing businesses, corporations and establishments, and to attract and facilitate the siting and relocation of employers who will provide highly skilled and high-paying employment opportunities for the citizens of this State;

b. While the quality of New Jersey's environment is paramount to the health and well-being of the residents of this State, it is essential to counter forcefully those who preach the errone-

ous dogma that our citizens must choose between the environment and economic prosperity and growth;

c. The Department of Environmental Protection must play a central role in educating the public that a clean environment and economic prosperity and growth are not only compatible, but interdependent;

d. To dispel the illusion that those two worthy objectives are inherently incompatible, the Department of Environmental Protection should immediately revise its current policies and procedures for reviewing permit applications, eliminating unduly long and burdensome practices which hinder timely investment, severely inhibit the availability of necessary capital, retard economic growth and development, frustrate new business ventures, and obstruct the creation of new employment opportunities for the citizens of this State;

e. It is, therefore, altogether fitting and proper, and within the public interest, to direct the Department of Environmental Protection to adopt new policies and procedures which will facilitate and expedite the review of permit applications and to that end to institute a system by which permit application fees will be paid incrementally based upon the department's completion of its duties and responsibilities at specific stages of the application review process.

C.13:1D-121 Definitions.

2. As used in this act:

“Administrative review” means a review to determine whether all of the information which is required for a permit application to be deemed complete has been submitted to the department;

“Applicant” means the person in whose name a permit is to be issued;

“Commissioner” means the Commissioner of Environmental Protection;

“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 et seq.), for the class or category of permit for which an application is made;

“Department” means the Department of Environmental Protection;

“Fee” means any fee, assessment or other charge imposed by the department pursuant to any law, rule or regulation for a permit;

“Member of a regulated profession or occupation” means any person subject to regulation by licensure or certification by the department pursuant to any law of this State; and

“Permit” means any permit, registration or license issued by the Department of Environmental Protection establishing the regulatory

and management requirements for an ongoing regulated activity as authorized by federal law or the following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the "Comprehensive Regulated Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey Statewide Mandatory Source Separation and Recycling Act," P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.); "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et al.); the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.); the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.); the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.). "Permit" shall not include the renewal or modification of a New Jersey Pollutant Discharge Elimination System permit issued pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.).

C.13:1D-122 Schedule for payment of fees.

3. a. The commissioner shall adopt rules and regulations establishing a schedule for the payment of fees for applications for those permits issued by the department which exceed \$1,000 in cost. The rules and regulations shall provide that each applicant shall receive at the time a payment is due pursuant to the provisions of paragraph (2) or (3) of this subsection a written notice from the department. The notice shall certify that the department has completed its responsibilities at this stage of the process and specify any actions, findings, or conclusions by the department with regard to the application. The schedule shall provide that payment may be made by an applicant in the following manner:

(1) One third of the total fee amount shall be payable to the department at the time of the filing of an application for a permit;

(2) One third of the total fee amount shall be payable to the department upon the conclusion of the administrative review of a completed application for a permit; and

(3) One third of the total fee amount shall be payable to the department upon the taking of final action by the department on the permit application.

b. In the case when a permit applicant requests that the department discontinue the review of a permit application, the applicant shall be required to pay that portion of the cost of the permit application incurred by the department until the review of the application was discontinued.

c. When an applicant for a permit appeals a decision of the department, and the appeal results in a contested case pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the department shall not require the payment of one third of the total fee amount as provided in paragraph (3) of subsection a. of this section, until the decision of the administrative law judge has been transmitted to the commissioner, and the commissioner has acted on that decision in the manner provided in section 10 of P.L.1968, c.410 (C.52:14B-10).

C.13:1D-123 Inapplicability of act.

4. The provisions of this act shall not apply to any license or certification fee charged by the department to a member of a regulated profession or occupation.

C.13:1D-124 Rules, regulations.

5. The commissioner, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations setting forth the payment schedule required pursuant to section 3 of this act, and any other rules and regulations as are necessary to implement the provisions of this act.

6. This act shall take effect immediately, but shall remain inoperative until July 1, 1994; provided, however, that the Commissioner of Environmental Protection may take such anticipatory action as may be necessary for the timely implementation of this act on the date it becomes operative.

Approved January 3, 1994.

CHAPTER 362

AN ACT requiring health insurers to file insurance fraud prevention plans and supplementing P.L.1983, c.320 (C.17:33A-1 et seq.).

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

C.17:33A-15 Filing of plan for prevention of fraudulent health insurance claims.

1. a. Every insurer writing health insurance in this State shall, within 120 days of the adoption of regulations by the commissioner pursuant to this act, file with the commissioner a plan for the prevention of fraudulent health insurance claims. The plan shall be deemed approved by the commissioner if not affirmatively approved or disapproved by the commissioner within 90 days of the date of filing. The commissioner may call upon the expertise of the director in his review of plans filed pursuant to this subsection. During the 90-day approval period the commissioner may request such amendments to the plan as he deems necessary. Any subsequent amendments to a plan filed with and approved by the commissioner shall be submitted for filing and deemed approved if not affirmatively approved or disapproved within 90 days from the filing date.

b. The implementation of plans filed and approved pursuant to subsection a. of this section shall be monitored by the division. The division shall promptly notify the Attorney General of any evidence of criminal activity encountered in the course of monitoring the implementation and execution of the plans. Each insurer writing health insurance in this State shall report to the director on an annual basis, beginning January 1, 1994, on the experience in implementing its fraud prevention plan.

c. In addition to any other penalties provided pursuant to P.L.1983, c.320 (C.17:33A-1 et seq.), the commissioner may impose a penalty of up to \$5,000 per day on any insurer for: failure to submit a plan; failure to submit any amendments to an approved plan; failure to properly implement an approved plan in a reasonable manner and within a reasonable time period; failure to provide a report pursuant to subsection b. of this section; or for any other violation of the provisions of this section. Any penalty imposed and collected pursuant to this subsection shall be deposited in the unemployment compensation fund created pursuant to R.S.43:21-9 and shall be dedicated exclusively to the purposes stated therein.

d. For the purposes of this section, "insurer" means an insurance company as defined in subsections a., b., c., d., e., and f. of section 3 of P.L.1983, c.320 (C.17:33A-3).

2. This act shall take effect immediately.

Approved January 4, 1994.

CHAPTER 363

AN ACT concerning misappropriation of a person's health care benefits and amending N.J.S.2C:20-2.

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

1. N.J.S.2C:20-2 is amended to read as follows:

Consolidation of theft offenses; grading; provisions applicable to theft generally.

2C:20-2. Consolidation of Theft Offenses; Grading; Provisions Applicable to Theft Generally. a. Consolidation of Theft Offenses. Conduct denominated theft in this chapter constitutes a single offense, but each episode or transaction may be the subject of a separate prosecution and conviction. A charge of theft may be supported by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the indictment or accusation, subject only to the power of the court to ensure fair trial by granting a bill of particulars, discovery, a continuance, or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

b. Grading of theft offenses.

(1) Theft constitutes a crime of the second degree if:

(a) The amount involved is \$75,000.00 or more;

(b) The property is taken by extortion;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the quantity is in excess of one kilogram; or

(d) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is \$75,000 or more.

(2) Theft constitutes a crime of the third degree if:

(a) The amount involved exceeds \$500.00 but is less than \$75,000.00;

(b) The property stolen is a firearm, motor vehicle, vessel, boat, horse or airplane;

(c) The property stolen is a controlled dangerous substance or controlled substance analog as defined in N.J.S.2C:35-2 and the amount involved is less than \$75,000.00 or is undetermined and the quantity is one kilogram or less;

- (d) It is from the person of the victim;
 - (e) It is in breach of an obligation by a person in his capacity as a fiduciary;
 - (f) It is by threat not amounting to extortion;
 - (g) It is of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
 - (h) The property stolen is a person's benefits under federal or State law, or from any other source, which the Department of Human Services or an agency acting on its behalf has budgeted for the person's health care and the amount involved is less than \$75,000.
- (3) Theft constitutes a crime of the fourth degree if the amount involved is at least \$200.00 but does not exceed \$500.00. If the amount involved was less than \$200.00 the offense constitutes a disorderly persons offense.
- (4) The amount involved in a theft shall be determined by the trier of fact. The amount shall include, but shall not be limited to, the amount of any State tax avoided, evaded or otherwise unpaid, improperly retained or disposed of. Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the offense.
- c. Claim of right. It is an affirmative defense to prosecution for theft that the actor:
- (1) Was unaware that the property or service was that of another;
 - (2) Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
 - (3) Took property exposed for sale, intending to purchase and pay for it promptly, or reasonably believing that the owner, if present, would have consented.
- d. Theft from spouse. It is no defense that theft was from the actor's spouse, except that misappropriation of household and personal effects, or other property normally accessible to both spouses, is theft only if it occurs after the parties have ceased living together.

2. This act shall take effect immediately.

Approved January 4, 1994.

CHAPTER 364

AN ACT concerning testing of persons convicted, indicted or formally charged for the commission of certain crimes, amending P.L.1985, c.404, P.L.1991, c.329, and supplementing Titles 2A and 2C of the New Jersey Statutes.

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

1. Section 6 of P.L.1985, c.404 (C.52:4B-44) is amended to read as follows:

C.52:4B-44 Standards for law enforcement agencies to ensure rights of crime victims.

6. a. The Attorney General shall, through the Office of Victim-Witness Advocacy in the Division of Criminal Justice in the Department of Law and Public Safety and in consultation with the county prosecutors, promulgate standards for law enforcement agencies to ensure that the rights of crime victims are enforced.

b. The standards shall require that the Office of Victim-Witness Advocacy in the Division of Criminal Justice and each county prosecutor's office provide the following services upon request for victims and witnesses involved in the prosecution of a case:

- (1) Orientation information about the criminal justice system and the victim's and witness's role in the criminal justice process;
- (2) Notification of any change in the case status and of final disposition;
- (3) Information on crime prevention and on available responses to witness intimidation;
- (4) Information about available services to meet needs resulting from the crime and referrals to service agencies, where appropriate;
- (5) Advance notice of the date, time and place of the defendant's initial appearance before a judicial officer, submission to the court of any plea agreement, the trial and sentencing;
- (6) Advance notice of when presence in court is not needed;
- (7) Advice about available compensation, restitution and other forms of recovery and assistance in applying for government compensation;
- (8) A waiting or reception area separate from the defendant for use during court proceedings;
- (9) An escort or accompaniment for intimidated victims or witnesses during court appearances;

(10) Information about directions, parking, courthouse and courtroom locations, transportation services and witness fees, in advance of court appearances;

(11) Assistance for victims and witnesses in meeting special needs when required to make court appearances, such as transportation and child care arrangements;

(12) Assistance in making travel and lodging arrangements for out-of-State witnesses;

(13) Notification to employers of victims and witnesses, if cooperation in the investigation or prosecution causes absence from work;

(14) Notification of the case disposition, including the trial and sentencing;

(15) Assistance to victims in submitting a written statement to a representative of the county prosecutor's office about the impact of the crime prior to the prosecutor's final decision concerning whether formal charges will be filed;

(16) Advice to victims about their right to make a statement about the impact of the crime for inclusion in the presentence report or at time of parole consideration, if applicable;

(17) Notification to victims of the right to make an in-person statement, prior to sentencing, directly to the sentencing court concerning the impact of the crime;

(18) Expediting the return of property when no longer needed as evidence; and

(19) Advise and counsel, or refer for advice or counseling, victims of sexual assault, or other criminal acts involving a risk of transmission of disease, concerning available medical testing and assist such victims, or refer such victims for assistance, in obtaining appropriate testing, counseling and medical care and in making application to the Violent Crimes Compensation Board for compensation for the costs of such testing, counseling and care.

c. In a case involving a victim of aggravated sexual assault or sexual assault as defined in subsection a. or c. of N.J.S.2C:14-2, the Office of Victim-Witness Advocacy or the county prosecutor's office involved in the case shall:

(1) Notify the victim of the victim's right to obtain an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS, and assist the victim, or refer the victim for assistance, in obtaining a test and appropriate counseling and medical care;

(2) Notify the victim of the victim's right to obtain a court order pursuant to subsection a. of section 4 of P.L.1993, c.364 (C.2C:43-2.2) requiring the offender to submit to an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS in the event that the offender is indicted, formally charged, convicted or adjudicated delinquent;

(3) Communicate the request of a victim who agrees to seek an order pursuant to subsection a. of section 4 of P.L.1993, c.364 (C.2C:43-2.2) to the prosecutor handling the case and notify the victim or arrange for the victim to be notified of the test result; and

(4) Assist the victim in applying to the Violent Crimes Compensation Board for compensation for the costs of testing, counseling and medical care.

2. Section 20 of P.L.1991, c.329 (C.52:4B-43.1) is amended to read as follows:

C.52:4B-43.1 Continuation of The Victim and Witness Advocacy Fund.

20. a. The Victim and Witness Advocacy Fund, established in the State Treasury by section 2 of P.L.1979, c.396 (C.2C:43-3.1), administered by the Department of Law and Public Safety through the Division of Criminal Justice, pursuant to rules and regulations promulgated by the Director of the Division of Criminal Justice, to support the development and provision of services to victims and witnesses of crimes and for related administrative costs, is hereby continued.

b. The division is authorized to continue disbursing moneys deposited in the Victim and Witness Advocacy Fund to fund the operation of the State Office of Victim and Witness Advocacy, the 21 county offices of Victim and Witness Advocacy and to provide funding to other public entities as deemed appropriate for the implementation of the Attorney General Standards to Ensure the Rights of Crime Victims.

c. In addition, the division, pursuant to rules and regulations to be promulgated by the director to ensure that funds are given to qualified entities that will provide services consistent with this act, shall award grants to qualified public entities and not-for-profit organizations that provide direct services to victims and witnesses, including but not limited to such services as:

(1) shelter, food and clothing;

- (2) medical and legal advocacy services;
- (3) 24-hour crisis response services and 24-hour hotlines;
- (4) information and referral and community education;
- (5) psychiatric treatment programs;
- (6) expanded services for victims' families and significant others;
- (7) short and long term counseling and support groups;
- (8) emergency locksmith and carpentry services;
- (9) financial services; and
- (10) medical testing ordered by a court pursuant to section 4 of P.L.1993, c.364 (C.2C:43-2.2).

d. Organizations eligible to apply for grants under subsection c. of this section include but are not limited to:

(1) member programs of the New Jersey Coalition for Battered Women, including but not limited to

- (a) Atlantic County Women's Center;
- (b) Shelter Our Sisters, (Bergen County);
- (c) Providence House/ Willingboro Shelter, (Burlington County);
- (d) YWCA/SOLACE, (Camden County);
- (e) Family Violence Project and The Safe House, (Essex County);
- (f) People Against Spouse Abuse, (Gloucester County);
- (g) Battered Women's Program, (Hudson County);
- (h) Women's Crisis Services, (Hunterdon County);
- (i) Womanspace, Inc., (Mercer County);
- (j) Women Aware, Inc., (Middlesex County);
- (k) Women's Resource and Survival Center, (Monmouth County);
- (l) Jersey Battered Women's Services, Inc., (Morris County);
- (m) Passaic County Women's Center, (Passaic County);
- (n) Salem County Women's Services, (Salem County);
- (o) Resource Center for Women and Their Families, (Somerset County);
- (p) Domestic Abuse Services, Inc., (Sussex County);
- (q) Project Protect, (Union County);
- (r) Domestic Abuse and Rape Crisis Center, Inc., (Warren County); and

(s) Ocean County Women's Center; and

(2) rape care services and programs, including, but not limited to:

- (a) Atlantic County Women's Center, (Atlantic County);
- (b) Bergen County Rape Crisis Center, (Bergen County);
- (c) Women Against Rape, (Burlington County);
- (d) Women Against Rape, (Camden County);
- (e) Coalition against Rape and Abuse, (Cape May County);
- (f) Cumberland County Guidance Center;

- (g) North Essex Helpline and Sexual Assault Support Service, (Essex County);
- (h) Gloucester County Rape Assault Prevention Program;
- (i) Christ Hospital Mental Health Center, serving Hudson County;
- (j) Women's Crisis Services, (Hunterdon County);
- (k) Rape Crisis Program Mercer County YWCA, (Mercer County);
- (l) Rape Crisis Intervention Center Roosevelt Hospital, (Middlesex County);
- (m) Women's Resource Center, (Monmouth County);
- (n) Parenting Center, Morristown Hospital, (Morris County);
- (o) Ocean County Advisory Commission on the Status of Women, (Ocean County);
- (p) Passaic County Women's Center, (Passaic County);
- (q) Salem County Rape Crisis Service, (Salem County);
- (r) Rape Crisis Service of Somerset and Richard Hall Mental Health Center Somerset County Coalition for the prevention and Treatment of Sexual Abuse;
- (s) Project Against Sexual Assault Abuse, (Sussex County);
- (t) Union County Rape Crisis Center;
- (u) Domestic Abuse and Rape Crisis Center, (Warren County); and
- (v) Alternatives to Domestic Violence of Hackensack, N.J. (Bergen County).

e. The Director shall report annually to the Governor and the Legislature concerning the administration of the Victim and Witness Advocacy Fund and the administration and award of grants authorized by this section.

C.2A:4A-43.1 Certain juveniles to submit to serological tests.

3. In accordance with section 4 of P.L.1993, c.364 (C.2C:43-2.2) and in addition to any other disposition authorized pursuant to N.J.S.2A:4A-43, a court shall order a juvenile charged with delinquency or adjudicated delinquent for an act which if committed by an adult would constitute aggravated sexual assault or sexual assault as defined in subsection a. or c. of N.J.S.2C:14-2 to submit to an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS.

C.2C:43-2.2 Issuance of court order requiring serological tests.

4. a. In addition to any other disposition made pursuant to law, a court shall order a person convicted of, indicted for or formally charged with, or a juvenile charged with delinquency or adjudi-

cated delinquent for an act which if committed by an adult would constitute, aggravated sexual assault or sexual assault as defined in subsection a. or c. of N.J.S.2C:14-2 to submit to an approved serological test for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS. The court shall issue such an order only upon the request of the victim and upon application of the prosecutor made at the time of indictment, charge, conviction or adjudication of delinquency. The person or juvenile shall be ordered by the court to submit to such repeat or confirmatory tests as may be medically necessary.

As used in this section, "formal charge" includes a proceeding by accusation in the event that the defendant has waived the right to an indictment.

b. A court order issued pursuant to subsection a. of this section shall require testing to be performed as soon as practicable by the Commissioner of the Department of Corrections pursuant to authority granted to the commissioner by sections 6 and 10 of P.L.1976, c.98 (C.30:1B-6 and 30:1B-10), by a provider of health care or at a health facility licensed pursuant to section 12 of P.L.1971, c.136 (C.26:2H-12). The order shall also require that the results of the test be reported to the offender and to the appropriate Office of Victim-Witness Advocacy.

c. The Office of Victim-Witness Advocacy, established pursuant to section 5 of P.L.1985, c.404 (C.52:4B-43), shall reimburse the Department of Corrections or Department of Health for the direct costs incurred by these departments for any tests ordered by a court pursuant to subsection a. of this section. Reimbursement shall be made following a request from the department.

d. In addition to any other disposition authorized, a court may order an offender at the time of sentencing to reimburse the State for the costs of the tests ordered by subsection a. of this section.

e. Upon receipt of the result of a test ordered pursuant to subsection a. of this section, the Office of Victim-Witness Advocacy shall provide the victim with appropriate counseling, referral for counseling and if appropriate, referral for health care. The office shall notify the victim or make appropriate arrangements for the victim to be notified of the test result.

f. The result of a test ordered pursuant to subsection a. of this section shall be confidential and a health care provider and employees of the Department of Corrections, the Office of Victim-Witness Advocacy, a health care provider, health care facility

or counseling service shall not disclose the result of a test performed pursuant to this section except as authorized herein or as otherwise authorized by law or court order. The provisions of this section shall not be deemed to prohibit disclosure of a test result to the person tested.

g. Persons who perform tests ordered pursuant to subsection a. of this section in accordance with accepted medical standards for the performance of such tests shall be immune from civil and criminal liability arising from their conduct.

h. This section shall not be construed to preclude or limit any other testing for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS which is otherwise permitted by statute, court rule or common law.

5. This act shall take effect immediately.

Approved January 4, 1994.

CHAPTER 365

AN ACT concerning the licensing of public movers and warehousemen, amending and supplementing P.L.1981, c.311, amending P.L.1984, c.140 and P.L.1971, c.60, and repealing section 5 of P.L.1981, c.311.

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

1. Section 2 of P.L.1981, c.311 (C.45:14D-2) is amended to read as follows:

C.45:14D-2 Definitions.

2. As used in this act:

a. "Accessorial service" means the preparation of articles for shipment, including, but not limited to, the packing, crating, boxing and servicing of appliances, the furnishing of containers, unpacking, uncrating and reassembling of articles, placing them at final destination and the moving or shifting of articles from one location to another within a building, or at a single address;

- b. "Board" means the State Board of Public Movers and Warehousemen established under this act;
- c. (Deleted by amendment, P.L.1993, c.365).
- d. "Department" means the Department of Law and Public Safety;
- e. "Household goods" means personal effects, fixtures, equipment, stock and supplies or other property usually used in or as part of the stock of a dwelling, when it is put into storage or when it is transported by virtue of its removal, in whole or in part, by a householder from one dwelling to another, or from the dwelling of a householder to the dwelling of another householder, or between the dwelling of a householder and a repair or storage facility, or from the dwelling to an auction house or other place of sale. The term "household goods" shall not apply to property moving from a factory or store, except property which the householder has purchased and which is transported at his request as part of the movement by the householder from one dwelling to another;
- f. "Intrastate commerce" means commerce moving wholly between points within the State over all public highways, or at a single location;
- g. "License" means a license issued by the board;
- h. "Motor vehicle" means any vehicle, machine, tractor, truck or semitrailer, or any combination thereof, propelled, driven or drawn by mechanical power, and used upon the public highways in the transportation of household goods, office goods and special commodities in intrastate commerce;
- i. "Mover's services" means all of the services rendered by a public mover;
- j. "Storage services" means all of the services rendered by a warehouseman;
- k. "Office goods" means personal effects, fixtures, furniture, equipment, stock and supplies or other property usually used in or as part of the stock of any office, or commercial, institutional, professional or other type of establishment, when it is put into storage or when the property is transported by virtue of its removal, in whole or in part, from one location to another, but does not mean or include stock and supplies or other property usually used in or as part of the stock of any office, or commercial, institutional, professional or other type of establishment, when put into storage;
- l. "Person" means any individual, copartnership, association, company, or corporation, and includes any trustee, receiver, assignee, lessee, or personal representative of any person herein defined;

m. "Place of business" means a business office located in New Jersey from which the mover or warehouseman conducts his daily business and where records are kept;

n. "Property" means all of the articles in the definition of household goods, office goods or special commodities;

o. "Public highway" or "highway" means any public street, road, thoroughfare, bridge and way in this State open to the use of the public as a matter of right for purposes of motor vehicular travel, including those that impose toll charges;

p. "Public mover" or "mover" means any person who engages in the transportation of household goods, office goods or special commodities by motor vehicle for compensation in intrastate commerce between points in this State, including the moving of household goods, office goods or special commodities from one location to another at a single address, and any person who engages in the performance of accessorial services; except that the term "public mover" or "mover" shall not apply to any person who engages in, or holds himself out to the general public as engaging in, the transportation of special commodities when such commodities are not transported by virtue of a removal, in whole or in part, and who does not engage, nor hold himself out to the general public as engaging in, the transportation of household or office goods;

q. "Special commodities" means uncrated or unboxed works of art, fixtures, appliances, business machines, electronic equipment, displays, exhibits, home, office, store, theatrical or show equipment, musical instruments, or other articles being put into storage or being moved, and which require the use of equipment and personnel usually furnished or employed by warehousemen or public movers, except that the provisions of P.L.1981, c.311 (C.45:14D-1 et seq.) shall not apply to any person engaged in the transportation or storage of special commodities when these commodities are not transported by virtue of a removal, in whole or in part;

r. "Storage" means the safekeeping of property in a depository for compensation;

s. "Tariff" means a schedule of rates and charges for the storage or transportation of property in intrastate commerce on file with the board, which shall be used in computing all charges on the storage or transportation of property as of the date of the time in storage or transportation;

t. "Warehouseman" means a person engaged in the business of storage;

u. "Removal" means the physical relocation, in whole or in part, of either household goods, office goods or special commodities from one location to another location, including internal relocations within the same room or facility, for compensation.

2. Section 4 of P.L.1981, c.311 (C.45:14D-4) is amended to read as follows:

C.45:14D-4 State Board of Public Movers and Warehousemen.

4. There is created in the Division of Consumer Affairs in the Department of Law and Public Safety a State Board of Public Movers and Warehousemen consisting of seven members who are residents of the State, 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.) and four of whom shall be representatives of the moving and storage industry.

The Governor shall appoint each member, other than the State executive department member, for a term of four years. Vacancies shall be filled for the unexpired terms only. No member may be appointed for more than two consecutive terms. The members and officers of the State Advisory Board of Public Movers and Warehousemen as presently constituted shall continue to hold office until the expiration of their respective terms and the qualification in office of their successors.

The organization, meetings and management of the board shall be established in regulations promulgated by the board.

The executive secretary of the board shall be appointed by the board and shall serve at its pleasure.

The board shall be empowered, within the limits of available funds, to hire any assistants it may deem necessary to administer this act.

3. Section 6 of P.L.1981, c.311 (C.45:14D-6) is amended to read as follows:

C.45:14D-6 Powers and duties of board.

6. The board shall, in addition to such other powers and duties as it may possess by law:

- a. Administer and enforce the provisions of this act;
- b. Adopt and promulgate rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act;

- c. Examine and pass on the qualifications of all applicants for license under this act, and issue a license to each qualified applicant;
- d. Establish professional standards for persons licensed under this act;
- e. Conduct hearings pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); except that the board shall have the right to administer oaths to witnesses, and shall have the power to issue subpoenas for the compulsory attendance of witnesses and the production of pertinent books, papers, or records;
- f. Conduct proceedings before any board, agency or court of competent jurisdiction for the enforcement of the provisions of this act;
- g. Annually publish a list of the names, addresses and tariffs of all persons who are licensed under this act;
- h. Establish reasonable requirements with respect to proper and adequate movers' and warehousemen's services and the furnishing of estimates, and prescribe a uniform system of accounts, records and reports;
- i. Adopt and promulgate rules and regulations to protect the interests of the consumer, including, but not limited to, regulations concerning the contents of information brochures which a mover or warehouseman shall give to a customer prior to the signing of a contract for moving or storage services.

4. Section 7 of P.L.1981, c.311 (C.45:14D-7) is amended to read as follows:

C.45:14D-7 Revocation, suspension, nonrenewal, nonissuance of licenses; grounds; hearing.

7. The board may, after notice and opportunity for a hearing, revoke, suspend or refuse to renew or issue any license issued pursuant to this act upon a finding that the applicant or holder of a license:
- a. Has obtained a license by means of fraud, misrepresentation or concealment of material facts;
 - b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
 - c. Has engaged in gross negligence or gross incompetence;
 - d. Has engaged in repeated acts of negligence or incompetence;
 - e. Has repeatedly failed to discharge contractual obligations to any person contracting for moving or storage services;
 - f. Has engaged in occupational misconduct;
 - g. Has been convicted of any crime involving moral turpitude or any crime relating adversely to the activities regulated by

P.L.1981, c.311 (C.45:14D-1 et seq.). For the purpose of this subsection, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction;

h. Has had his authority to engage in the activities regulated by P.L.1981, c.311 (C.45:14D-1 et seq.) revoked or suspended by any other state, agency or authority for reasons consistent with that act; or

i. Has violated or failed to comply with the provisions of P.L.1981, c.311 (C.45:14D-1 et seq.) or any regulation adopted thereunder.

The licensee or applicant shall be furnished with an official statement of the reasons for the board's proposed action and shall be afforded an opportunity for a hearing.

5. Section 8 of P.L.1981, c.311 (C.45:14D-8) is amended to read as follows:

C.45:14D-8 Restoration after one year.

8. The board may, after one year from the date of the revocation of any license, restore the license.

6. Section 9 of P.L.1981, c.311 (C.45:14D-9) is amended to read as follows:

C.45:14D-9 License required, application, issuance.

9. a. It shall be unlawful for any person to engage in the business of public moving or storage unless he shall have obtained from the board a license to engage in the business and shall have a permanent place of business in this State;

b. Application for a license shall be made in writing to the board, be verified under oath by the agent in charge and shall contain the following information: (1) the name and location of the applicant; (2) description of the applicant's moving vehicles and storage facilities; (3) identification of the issuer and amount of any insurance or surety bonds maintained by the applicant. A license shall be issued to a qualified applicant if it is found that the applicant is fit, willing and able to perform the service of a mover or warehouseman, and to conform to the provisions of this act;

c. Every person advertising moving or storage services shall include in any advertisement the number of his license, and his New Jersey business address and telephone number;

d. No license shall be issued to an applicant if the applicant has: (1) committed any act which if committed by a licensee would be grounds for suspension or revocation; (2) misrepresented any material fact on his application; (3) not registered each

vehicle which will be performing intrastate moves in New Jersey, except on vehicles which have been rented or leased and are operated by a public mover licensed under this act; (4) not established or maintained a place of business in New Jersey;

e. A copy of the license shall be carried on each truck, tractor, trailer or semitrailer or combination thereof at all times when the vehicle is being used in operations subject to this act.

7. Section 11 of P.L.1981, c.311 (C.45:14D-11) is amended to read as follows:

C.45:14D-11 Observance of rules and regulations.

11. Every warehouseman or mover shall provide safe, proper and adequate service and shall observe the board's rules and regulations concerning the storage or transportation of property.

8. Section 14 of P.L.1981, c.311 (C.45:14D-14) is amended to read as follows:

C.45:14D-14 Tariffs.

14. a. Public movers and warehousemen shall file their tariffs with the board semiannually;

b. No public mover or warehouseman shall charge, demand, collect or receive a greater or lesser compensation for his service than specified in the tariff, except that discounts and rebates may be provided in connection with the furnishing of moving, storage or accessorial services to any person who is 62 years or older.

9. Section 15 of P.L.1981, c.311 (C.45:14D-15) is amended to read as follows:

C.45:14D-15 Fees; one-year licenses; fees only to defray expenses.

15. a. The board shall by rule or regulation establish, prescribe or change the fees for licenses, renewals of licenses or other services. Licenses shall expire one year from the date of issue unless the holder thereof shall, 30 days before such expiration, pay to the board a renewal fee accompanied by a renewal application on a form prescribed by the board.

b. The board's fees established, prescribed or changed pursuant to this section shall be established, prescribed or changed to such extent as shall be necessary to defray all proper expenses incurred by the board and any staff employed to administer this

act; but such fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

c. All fees and any fines imposed by the board shall be paid to the board and shall be forwarded by the board to the State Treasurer and become part of the General Fund.

d. There shall be annually appropriated to the Department of Law and Public Safety for the use of the board such sums as shall be necessary to implement and effectuate the provisions of this act.

10. Section 16 of P.L.1981, c.311 (C.45:14D-16) is amended to read as follows:

C.45:14D-16 Violations of act; penalties.

16. Any person violating any provision of P.L.1981, c.311 (C.45:14D-1 et seq.) shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$2,500.00 for the first offense and not more than \$5,000.00 for the second and each subsequent offense. For the purpose of this section, each transaction or violation shall constitute a separate offense; except a second or subsequent offense shall not be deemed to exist unless an administrative or court order has been entered in a prior, separate and independent proceeding. In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action in the name of the board for the collection or enforcement of civil penalties for the violation of any provision of that act. The action may be brought in a summary manner pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) and the rules of court governing actions for the collection of civil penalties in the municipal or Special Civil Part of the Law Division of the Superior Court where the offense occurred. Process in the action may be by summons or warrant and if the defendant in the action fails to answer the action, the court shall, upon finding an unlawful act or practice to have been committed by the defendant, issue a warrant for the defendant's arrest in order to bring the person before the court to satisfy the civil penalties imposed. In an action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice. Any action alleging the unlicensed practice of the activities regulated by P.L.1981, c.311 (C.45:14D-1 et seq.) shall be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court. In an action brought pursuant to that act, the board or the court may order the payment of costs for the use of the State.

11. Section 7 of P.L.1984, c.140 (C.45:14D-17) is amended to read as follows:

C.45:14D-17 Investigations of suspected violations.

7. Whenever it shall appear to the board or the Attorney General that a person has engaged in, or is engaging in, any act or practice declared unlawful by P.L.1981, c.311 (C.45:14D-1 et seq.), or when the board or the Attorney General shall deem it to be in the public interest to inquire whether a violation may exist, the board through the Attorney General, or the Attorney General acting independently, may:

a. Require any person to file, on a form to be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to that act;

b. Examine under oath any person in connection with any act or practice subject to that act;

c. Inspect any premises from which the activity regulated by that act is conducted;

d. Examine any goods, ware or item used in the rendition of any service by a public mover or warehouseman;

e. Examine any record, book, document, account or paper maintained by or for any public mover or warehouseman in the regular course of engaging in the activities regulated by that act or regulations promulgated pursuant to that act;

f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used or maintained by or for any public mover or warehouseman in the regular course of engaging in the activities regulated by that act or regulations promulgated pursuant to that act. When necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection.

In order to accomplish the objectives of P.L.1981, c.311 (C.45:14D-1 et seq.) or the regulations promulgated pursuant to that act, the board or the Attorney General may hold investigative hearings as necessary and may issue subpoenas to compel the attendance of any person or the production of books, records or papers at a hearing or inquiry.

12. Section 8 of P.L.1984, c.140 (C.45:14D-18) is amended to read as follows:

C.45:14D-18 Court order.

8. If a person fails or refuses to file any statement or report, or refuses access to premises from which activities regulated by P.L.1981, c.311 (C.45:14D-1 et seq.) are conducted in any lawfully conducted investigative matter or fails to obey a subpoena issued pursuant to that act, the board or the Attorney General may apply to the Superior Court and obtain an order:

- a. Adjudging that person in contempt of court and assessing civil penalties in accordance with the amounts prescribed by that act; or
- b. Granting other relief as required; or
- c. Suspending the license of that person until compliance with the subpoena or investigative demand is effected.

13. Section 10 of P.L.1984, c.140 (C.45:14D-20) is amended to read as follows:

C.45:14D-20 Additional penalties.

10. In addition or as an alternative, as the case may be, to revoking, suspending or refusing to renew any license, the board may, after affording an opportunity to be heard:

- a. Assess civil penalties in accordance with P.L.1981, c.311 (C.45:14D-1 et seq.);
- b. Order that any person violating any provision of that act cease and desist from future violations thereof or take affirmative corrective action as necessary with regard to any act or practice found to be unlawful by the board;
- c. Order any person found to have violated any provision of that act to restore or to return to any person aggrieved by an unlawful act or practice any moneys or property, real or personal, acquired by means of that act or practice; except that the board shall not order restoration in a dollar amount greater than those moneys received by a licensee or his agent or any other person violating that act.

In any administrative proceeding on a complaint alleging a violation of that act, the board may issue subpoenas to compel the attendance of witnesses or the production of books, records, or documents at the hearing on the complaint.

14. Section 11 of P.L.1984, c.140 (C.45:14D-21) is amended to read as follows:

C.45:14D-21 Injunctive relief.

11. Whenever it shall appear to the board or the Attorney General that a violation of P.L.1981, c.311 (C.45:14D-1 et seq.), including the unlicensed practice of the activities regulated therein, has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting the act or practice. In the proceeding the court may assess a civil penalty in accordance with the provisions of that act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter any orders necessary to prevent the performance of an unlawful practice in the future and to remedy fully any past unlawful activity. In any action brought pursuant to this section, the court shall not suspend or revoke any license issued by the board.

15. Section 12 of P.L.1984, c.140 (C.45:14D-22) is amended to read as follows:

C.45:14D-22 Docketing of judgment.

12. Upon the failure of any person to comply within 10 days after service of any order of the board directing payment of penalties or restoration of moneys or property, the Attorney General or the board may issue a certificate to the Clerk of the Superior Court that the person is indebted to the State for the payment of the penalty and the moneys or property ordered restored. A copy of the certificate shall be served upon the person against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which the penalty is imposed, the amount of the penalty imposed, and amount of moneys ordered restored, a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court, and the Attorney General shall have all rights and remedies of a judgment creditor, in addition to exercising any other available remedies. The entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the board's order.

An action to enforce the provisions of an order entered by the board or to collect a penalty levied thereby may be brought in any

municipal or Special Civil Part of the Law Division of the Superior Court or the Superior Court in a summary manner pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.) and the rules of court governing the collection of civil penalties. Process in the action shall be by summons or warrant, and if the defendant fails to answer the action, the court shall issue a warrant for the defendant's arrest for the purpose of bringing the person before the court to satisfy any order entered.

16. Section 13 of P.L.1984, c.140 (C.45:14D-23) is amended to read as follows:

C.45:14D-23 Violation of cease and desist order.

13. When it shall appear to the board or the Attorney General that a person against whom a cease and desist order has been entered has violated the order, the board or the Attorney General may initiate a summary proceeding in the Superior Court for the violation thereof. Any person found to have violated a cease and desist order shall pay to the State of New Jersey civil penalties in the amount of not more than \$25,000.00 for each violation of the order. If a person fails to pay a civil penalty assessed by the court for violation of a cease and desist order, the court assessing the unpaid penalty is authorized, upon application of the board or the Attorney General, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

17. Section 15 of P.L.1984, c.140 (C.45:14D-25) is amended to read as follows:

C.45:14D-25 Insurance requirements.

15. No license shall be issued to a warehouseman or mover or remain in force unless the warehouseman or mover complies with the rules or regulations that the board shall prescribe governing policies of insurance, qualifications as a self-insurer or other securities or agreements in the amount that the board may require.

18. Section 1 of P.L.1971, c.60 (C.45:1-2.1) is amended to read as follows:

C.45:1-2.1 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 Counselor 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 New Jersey Real Estate Commission, 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 State Board of Social Work Examiners, and the State Board of Public Movers and Warehousemen.

19. This 1993 amendatory and supplementary act shall not affect the orders, rules and regulations heretofore made or promulgated by the Director of the Division of Consumer Affairs, but such orders, rules and regulations consistent with the purposes and provisions of this act shall continue with full force and effect until amended, modified or repealed by the board established pursuant to this 1993 amendatory and supplementary act.

Repealer

20. Section 5 of P.L.1981, c.311 (C.45:14D-5) is repealed.

21. This act shall take effect immediately.

Approved January 4, 1994.

CHAPTER 366

AN ACT concerning rights of action available to certain law enforcement officers, firefighters and emergency service personnel, and supplementing chapter 62A of Title 2A of the New Jersey Statutes.

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

C.2A:62A-21 Additional right of action, recovery.

1. In addition to any other right of action or recovery otherwise available under law, whenever any law enforcement officer, firefighter, or member of a duly incorporated first aid, emergency, ambulance or rescue squad association suffers any injury, disease or death while in the lawful discharge of his official duties and that injury, disease or death is directly or indirectly the result of the neglect, willful omission, or willful or culpable conduct of any person or entity, other than that law enforcement officer, firefighter or first aid, emergency, ambulance or rescue squad member's employer or co-employee, the law enforcement officer, firefighter, or first aid, emergency, ambulance or rescue squad member suffering that injury or disease, or, in the case of death, a representative of that law enforcement officer, firefighter or first aid, emergency, ambulance or rescue squad member's estate, may seek recovery and damages from the person or entity whose neglect, willful omission, or willful or culpable conduct resulted in that injury, disease or death.

C.2A:62A-22 Rights, remedies, limitations declared additional, cumulative.

2. The rights, remedies and limitations accorded by the provisions of this act are hereby declared to be in addition to and cumulative of the rights, remedies and limitations accorded under law and nothing herein shall be construed to deny, abrogate or impair any such statutory right, remedy or prohibition.

3. This act shall take effect immediately, but the actions permitted herein shall be available only for injuries, diseases and deaths suffered on or after the effective date.

Approved January 5, 1994.

CHAPTER 367

AN ACT concerning urban enterprise zones, amending and supplementing P.L.1983, c.303.

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.52:27D-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, is engaged in the active conduct of a trade or business in that zone; 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 and has at least 25% of its full-time employees employed at a business location in the zone, meeting one or more of the following criteria:

(1) Residents within the zone, 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 economically disadvantaged pursuant to the Jobs Training Partnership Act, Pub.L.97-300 (29 U.S.C. §1501 et seq.);

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 Statistics, Division of Planning and

Research of the State Department of Labor. For purposes of P.L.1983, c.303 (C.52:27H-60 et seq.), the seven municipalities in which the six enterprise zones are to be designated pursuant to criteria according priority consideration for designation of these zones pursuant to section 7 of P.L.1983, c.303 (C.52:27H-66), 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; and

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).

2. Section 5 of P.L.1983, c.303 (C.52:27H-64) is amended to read as follows:

C.52:27H-64 Authority allocated to Commerce and Economic Development.

5. For purposes of compliance with Article V, Section IV, paragraph 1 of the Constitution of the State of New Jersey, the authority created by this act is allocated to the Department of

Commerce and Economic Development. All clerical and professional assistants, and all personnel, procurement, budgetary and other administrative services necessary or incidental to its proper functioning shall be provided by and through that department. The authority shall, subject to the availability of funds, reimburse the department for all administrative services provided to the authority pursuant to this section.

3. 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 20 enterprise zones shall be in effect at any one time. No more than one enterprise zone shall be designated in any one municipality. Any designation granted shall be for a period of 20 years 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 this 1993 amendatory and supplementary act 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 this 1993 amendatory and supplementary act. 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.

4. Section 8 of P.L.1983, c.303 (C.52:27H-67) is amended to read as follows:

C.52:27H-67 Municipal zone development corporations.

8. The governing body of any qualifying municipality may, by ordinance, create or designate a nonprofit corporation established

pursuant to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes to act as the zone development corporation for the municipality. Any zone development corporation so created or so designated shall include on its board of directors representatives of the government of the qualifying municipality, members of the business community thereof, and representatives of community organizations in the municipality, and the total membership of the board of directors shall be broadly representative of businesses and communities within the municipality.

Notwithstanding the provisions of any other law to the contrary, a zone development corporation shall be considered to be a local development corporation for the purpose of receiving any State financial or technical assistance as may be available, and the creation of a zone development corporation shall not preclude a qualifying municipality from creating another local development corporation for the municipality with responsibilities not related to the enterprise zone, nor preclude that other corporation from receiving State financial or technical assistance.

5. Section 10 of P.L.1983, c.303 (C.52:27H-69) is amended to read as follows:

C.52:27H-69 Areas eligible for designation.

10. An area defined by a continuous border within one qualifying municipality or within two or more contiguous qualifying municipalities and two noncontiguous areas each having a continuous border within two noncontiguous qualifying municipalities shall be eligible for designation as a zone if:

a. It has been designated an "area in need of rehabilitation" pursuant to Article VIII, Section I, paragraph 6 of the Constitution of the State of New Jersey and P.L.1977, c.12 (C.54:4-3.95 et seq.); or is qualified for that designation in the judgment of the authority; and

b. It meets the criteria established by the authority pursuant to this act relating to the incidence of poverty, unemployment and general economic distress.

6. Section 21 of P.L.1983, c.303 (C.52:27H-80) is amended to read as follows:

C.52:27H-80 50% tax exemption for retail sales.

21. Receipts of retail sales, except retail sales of motor vehicles, of alcoholic beverages as defined in the "Alcoholic Beverage Tax Law," R.S.54:41-1 et seq., cigarettes as defined in the "Cigarette

Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and of manufacturing machinery, equipment or apparatus, made by a certified vendor from a place of business owned or leased and regularly operated by the vendor for the purpose of making retail sales, and located in a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), are exempt 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.).

Any vendor, which is a qualified business having a place of business located in a designated enterprise zone, may apply to the Director of the Division of Taxation in the Department of the Treasury for certification pursuant to this section. The director shall certify a vendor if he shall find that the vendor owns or leases and regularly operates a place of business located in the designated enterprise zone for the purpose of making retail sales, that items are regularly exhibited and offered for retail sale at that location, and that the place of business is not utilized primarily for the purpose of catalogue or mail order sales. The certification under this section shall remain in effect during the time the business retains its status as a qualified business meeting the eligibility criteria of section 27 of P.L.1983, c.303 (C.52:27H-86). However, the director may at any time revoke a certification granted pursuant to this section if he shall determine that the vendor no longer complies with the provisions of this section.

Notwithstanding the provisions of this act to the contrary, except as may otherwise be provided by section 7 of P.L.1983, c.303 (C.52:27H-66), the authority may, in its discretion, determine whether or not the provisions of this section shall apply to any enterprise zone designated after the effective date of P.L.1985, c.142 (C.52:27H-66 et al.); provided, however, that the authority may make such a determination only where the authority finds that the award of an exemption of 50 percent of the tax imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.) will not have any adverse economic impact upon any other urban enterprise zone.

Notwithstanding any other provisions of law to the contrary, after first depositing 10 percent of the gross amount of all revenues received from the taxation of retail sales made by certified vendors from business locations in designated enterprise zones to which this exemption shall apply into the account created in the name of the authority in the enterprise zone assistance fund pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88), the

remaining 90 percent shall be deposited immediately upon collection by the Department of the Treasury, as follows:

a. In the first five year period during which the State shall have collected reduced rate revenues within an enterprise zone, all such revenues shall be deposited in the enterprise zone assistance fund created pursuant to section 29 of P.L.1983, c.303 (C.52:27H-88);

b. In the second five year period during which the State shall have collected reduced rate revenues within an enterprise zone, 66 2/3% of all those revenues shall be deposited in the enterprise zone assistance fund, and 33 1/3% shall be deposited in the General Fund;

c. In the third five year period during which the State shall have collected reduced rate revenues within an enterprise zone, 33 1/3% of all those revenues shall be deposited in the enterprise zone assistance fund, and 66 2/3% shall be deposited in the General Fund;

d. In the final five year period during which the State shall have collected reduced rate revenues within an enterprise zone, but not to exceed the life of the enterprise zone, all those revenues shall be deposited in the General Fund.

Commencing on the effective date of P.L.1993, c.144, all revenues in any enterprise zone to which the provisions of this section have been extended prior to the enactment of P.L.1993, c.144 shall be deposited into the enterprise zone assistance fund until there shall have been deposited all revenues into that fund for a total of five full years, as set forth in subsection a. of this section. The State Treasurer then shall proceed to deposit funds into the enterprise zone assistance fund according to the schedule set forth in subsections b. through d. of this section, beginning at the point where the enterprise zone was located on that schedule on the effective date of P.L.1993, c.144. No enterprise zone shall receive the deposit benefit granted by any one subsection of this section for more than five cumulative years.

The revenues required to be deposited in the enterprise zone assistance fund under this section shall be used for the purposes of that fund and for the uses prescribed in section 29 of P.L.1983, c.303 (C.52:27H-88), subject to annual appropriations being made for those purposes and uses.

7. Section 22 of P.L.1983, c.303 (C.52:27H-81) is amended to read as follows:

C.52:27H-81 Rules, regulations.

22. The Director of the Division of Taxation in the Department of the Treasury shall promulgate such rules and regulations as

may be necessary to effectuate the provisions of sections 17 through 21 inclusive, and sections 27 and 29 of P.L.1983, c.303 (C.52:27H-76 to C.52:27H-80, inclusive, C.52:27H-86 and C.52:27H-88). The Commissioner of the Department of Commerce and Economic Development shall promulgate such rules and regulations as may be necessary to effectuate the provisions of section 16 of P.L.1983, c.303 (C.52:27H-75).

8. Section 27 of P.L.1983, c.303 (C.52:27H-86) is amended to read as follows:

C.52:27H-86 Eligibility for incentives.

27. To be eligible for any of the incentives provided under this act a qualified business must demonstrate to the satisfaction of the authority that:

a. The business will create new employment in the municipality; and

b. The business will not create unemployment in other areas of the State, including the municipality in which the zone is located.

c. For the purposes of eligibility for the incentives provided under sections 17, 19, 20, and 21 of P.L.1983, c.303 (C.52:27H-76, 52:27H-78, 52:27H-79, and 52:27H-80, respectively), a qualified business shall not be required to meet the requirements of subsection a. of this section, if:

(1) At the time of designation of the enterprise zone or at the time zone designation is extended by expansion to the location of a business, the qualified business had been engaged in the active conduct of a trade or business in that zone or in the added area of that zone for at least one year prior to that designation or expansion;

(2) The qualified business employs fewer than 50 employees;

(3) The qualified business has entered into an agreement, approved by the authority, with the governing body of the qualifying municipality in which the enterprise zone is located, under which the qualified business agrees to undertake an investment in the enterprise zone in lieu of the employment of new employees. An investment permitted under an agreement shall be in an amount and of a nature which the municipal governing body and the authority find shall contribute substantially to the economic attractiveness of the enterprise zone, and may include, but shall not be limited to:

(a) The improvement of the exterior appearance or customer facilities of the property constituting the place of business of the qualified business within the zone; provided that the improvement

is of a permanent nature and not required to meet existing ordinances or code regulations; or

(b) Monetary contributions to the qualifying municipality to undertake improvements to increase the safety or attractiveness of the zone to businesses which may wish to locate there or to consumer visitors to the zone, including, but not limited to litter clean-up and control, landscaping, parking areas and facilities, recreational and rest areas and facilities, repair or improvements to public streets, curbing, sidewalks and pedestrian thoroughfares, street lighting, or increased police, fire or sanitation services in the enterprise zone.

In order to meet the requirements of paragraph (3) of this subsection, an investment shall be in an amount no less than \$5,000.00 if the qualified business employs 10 or fewer employees, or if the qualified business employs more than 10 employees, not less than the amount produced by multiplying the number of employees employed by the qualified business by \$500.00. A qualified business shall be required to make an investment for each year the qualified business does not meet the requirements of subsection a. of this section. In order to receive the incentives permitted by this section, the business shall provide written evidence of the investment to the authority.

9. Section 29 of P.L.1983, c.303 (C.52:27H-88) is amended to read as follows:

C.52:27H-88 Enterprise zone assistance fund.

29. a. There is created an enterprise zone assistance fund to be held by the State Treasurer, which shall be the repository for all moneys required to be deposited therein under section 21 of P.L.1983, c.303 (C.52:27H-80) or moneys appropriated annually to the fund. All moneys deposited in the fund shall be held and disbursed in the amounts necessary to fulfill the purposes of this section and subject to the requirements hereinafter prescribed. The State Treasurer may invest and reinvest any moneys in the fund, or any portion thereof, in legal obligations of the United States or of the State or of any political subdivision thereof. Any income from, interest on, or increment to moneys so invested or reinvested shall be included in the fund.

The State Treasurer shall maintain separate accounts for each enterprise zone designated under this act, and one in the authority's name for the administration of the Urban Enterprise Zone program.

The State Treasurer shall credit to each account an amount of the moneys deposited in the fund equal to the amount of revenues collected from the taxation of retail sales made in the zone and appropriated to the enterprise zone assistance fund, or that amount of moneys appropriated to the fund and required to be credited to the enterprise zone account of the qualifying municipality pursuant to section 21 of P.L.1983, c.303 (C.52:27H-80).

The State Treasurer shall promulgate the rules and regulations necessary to govern the administration of the fund for the purposes of this section.

b. The enterprise zone assistance fund shall be used for the purpose of assisting qualifying municipalities in which enterprise zones are designated in undertaking public improvements, economic development projects and in upgrading eligible municipal services in designated enterprise zones.

c. The governing body of a qualifying municipality in which an enterprise zone is designated and the zone development corporation created or designated by the municipality for that enterprise zone may, by resolution jointly adopted after public hearing, propose to undertake a project for the public improvement of the enterprise zone or to increase eligible municipal services in the enterprise zone, and to fund that project or increase in eligible municipal services from moneys deposited in the enterprise zone assistance fund and credited to the account maintained by the State Treasurer for the enterprise zone.

The proposal so adopted shall set forth a plan for the project or for the increase in eligible municipal services and shall include:

(1) A description of the proposed project or of the municipal services to be increased;

(2) An estimate of the total project costs, or of the total costs of increasing the municipal services, and an estimate of the amounts of funding necessary annually from the enterprise zone account;

(3) A statement of any other revenue sources to be used to finance the project or to fund the increase in eligible municipal services;

(4) A statement of the time necessary to complete the project, or of the time during which the increased municipal services are to be maintained;

(5) A statement of the manner in which the proposed project or increase in municipal services furthers the municipality's policy and intentions for addressing the economic and social conditions existing in the area of the enterprise zone as set forth in the zone development plan approved by the authority; and

(6) A description of the financial and programmatic controls and reporting mechanisms to be used to guarantee that the funds will be spent in accordance with the plan and that the project or increased municipal service will accomplish its purpose.

As used in this section, "project" means an activity funded by the zone assistance fund through the qualified municipality and implemented by the zone development corporation, including the purchasing, leasing, condemning, or otherwise acquiring of land or other property, or an interest therein, in the enterprise zone or as necessary for a right-of-way or other easement to or from the enterprise zone; the relocating and moving of persons or businesses displaced by the acquisition of land or property; the rehabilitation and redevelopment of land or property, including demolition, clearance, removal, relocation, renovation, alteration, construction, reconstruction, installation or repair of a land or a building, street, highway, alley, utility, service or other structure or improvement which will lead to increased economic activity within the zone; the acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, except buildings and facilities for the general conduct of government and schools; the establishment of revolving loan or grant programs for qualified businesses in the zone to encourage private investment and job creation, matching grant programs for the establishment or operation of pedestrian malls, special improvement districts and tax increment districts, or other appropriate entity; and the costs associated therewith including the costs of an administrative appraisal, economic and environmental analyses, environmental remediation, engineering, planning, design, architectural, surveying or other professional or managerial services necessary to effectuate the project.

As used in this section, "eligible municipal services" means the hiring of additional policemen or firemen assigned duties in the enterprise zone, or the purchasing or leasing of additional police or fire vehicles, equipment or apparatus to be used for the provision of augmented or upgraded public safety services in the enterprise zone and its immediate vicinities.

d. Upon adoption by the governing body of the qualifying municipality and by the zone development corporation, the proposal shall be sent to the authority for its evaluation and approval. The authority shall approve the proposal if it shall find:

(1) In the case of a project, that the proposed project furthers the policy and intentions of the zone development plan approved

by the authority, and that the estimated annual payments for the project from the enterprise zone account to which the proposal pertains are not likely to result in a deficit in that account;

(2) In the case of an increase in eligible municipal services, that the proposal furthers the policy and intentions of the zone development plan approved by the authority; that the qualifying municipality has furnished satisfactory assurances that the additional policemen or firemen to be hired, or the additional vehicles, equipment or apparatus to be purchased or leased, shall be used to augment or upgrade public safety in the enterprise zone, and shall not be used in other areas of the municipality; that the qualifying municipality shall annually appropriate for the increased eligible municipal services an amount equal to 20% of the amount of annual payments for the eligible municipal services from the enterprise zone account and shall not request for the increased eligible municipal services an amount equal to more than 35% of the amount of annual payments into the enterprise zone account, unless the municipality and the authority have entered into an agreement or agreements to the contrary prior to July 1, 1992; and that the estimated annual payments for the eligible municipal services from the enterprise zone account to which the proposal pertains are not likely to result in a deficit in that account.

e. If the authority shall approve the proposal, it shall annually, upon its receipt of a written statement from the governing body of the qualifying municipality and the zone development corporation, certify to the State Treasurer the amount to be paid in that year from the enterprise zone account in the enterprise zone assistance fund with respect to each project or increase in eligible municipal services approved. The authority may at any time revoke its approval of a project or an increase in eligible municipal services if it finds that the annual payments made from the enterprise zone assistance fund are not being used as required by this section.

f. Upon certification by the authority of the annual amount to be paid to a qualifying zone with respect to any project or increase in eligible municipal services, the State Treasurer shall pay in each year to the qualifying municipality from the amounts deposited in the enterprise zone assistance fund the amount so certified, within the limits of the amounts credited to the enterprise zone account of the qualifying municipality.

g. An amount not to exceed one-third of the amount deposited in the account created in the name of the authority in the enterprise zone assistance fund shall be used by the authority for the

coordination and administration of the program throughout the State, including but not limited to costs for personnel, operating expenses and marketing. The balance of the remaining amount shall be distributed to qualifying municipalities in proportion to each municipality's contribution to the enterprise zone assistance fund for the coordination and administration of the program within the municipality, including but not limited to costs for personnel, operating expenses and marketing.

10. Section 30 of P.L.1983, c.303 (C.52:27H-89) is amended to read as follows:

C.52:27H-89 Limit on designation.

30. No enterprise zones shall be designated after January 1, 1996.

C.52:27H-65.1 Preparation of fiscal impact study.

11. In addition to the duties of the authority required under section 6 of P.L.1983, c.303 (C.52:27H-65), the authority shall also prepare a fiscal impact study of each additional enterprise zone designated pursuant to this 1993 amendatory and supplementary act and for each enterprise zone designated prior to this act. The study shall include, but not be limited to, an analysis of the effects of each enterprise zone on the local economy of the area in which the zone is located and an assessment of the effectiveness of these zones in addressing the goals of the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.). The study shall be completed within a reasonable time after the end of one year following the designation of the additional zones by the authority pursuant to the priority consideration criteria set forth in this 1993 amendatory and supplementary act. The authority shall submit its study to the Governor and the Legislature, including any recommendations for legislation to improve the effectiveness of operation of these zones, within two years from the effective date of this 1993 amendatory and supplementary act. The authority shall use funds available from the account created in the name of the authority in the enterprise zone assistance fund for the administration of the program to pay for the cost of the study.

12. This act shall take effect on the first day of the third month following enactment, but the State Treasurer and the Commissioner of Commerce and Economic Development may take such anticipatory actions as may be necessary for the timely implementation of this act upon the effective date thereof.

Approved January 5, 1994.

CHAPTER 368

AN ACT to amend "An Act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1994 and regulating the disbursement thereof," approved June 29, 1993 (P.L.1993, c.155).

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

1. The following language provision in Section 1 of P.L.1993, c.155 (on pages 103 and 104 of Senate, No. 2000 of 1993), is amended to read as follows:

DIRECT STATE SERVICES

94 INTER-DEPARTMENTAL ACCOUNTS

70 Government Direction, Management and Control

74 General Government Services

9400 Property Rentals, Insurance and Other Services

The amount hereinabove for the Newark Performing Arts Center account shall be used to pay the State's obligations pursuant to a lease with the New Jersey Economic Development Authority for the lease of real property and infrastructure improvements and the Performing Arts Center structure to be constructed thereon purchased by the authority for the State in the city of Newark. Notwithstanding any other provision of law, the State Treasurer may enter into a lease with the New Jersey Economic Development Authority to lease the real property and improvements thereon purchased or caused to be constructed by the authority for the State in the city of Newark for the Performing Arts Center, subject to the prior written consent of the Director of the Division of Budget and Accounting, the President of the Senate and the Speaker of the General Assembly. Upon the final payment of the State's obligations pursuant to the lease for the real property and improvements purchased by the authority, the title to the real property and improvements shall revert to the State. The State may sublease the land and facilities for the purpose of operating, maintaining or financing a Performing Arts Center in Newark. Any sublease for use of land and improvements acquired for the State by the New Jersey Economic Development Authority for the Performing Arts Center shall be subject to the prior written

approval of the Director of the Division of Budget and Accounting and the Joint Budget Oversight Committee, or its successor.

2. This act shall take effect immediately.

Approved January 7, 1994.

CHAPTER 369

AN ACT concerning solid waste disposal facilities, and appropriating moneys from the "Resource Recovery and Solid Waste Disposal Facility Fund."

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

1. There is appropriated to the Department of Environmental Protection from the "Resource Recovery and Solid Waste Disposal Facility Fund" established pursuant to section 14 of the "Resource Recovery and Solid Waste Disposal Facility Bond Act of 1985," P.L.1985, c.330, the sum of \$10,400,000 for the purpose of providing a zero-interest State loan to the following local government unit to finance the construction of a resource recovery facility as follows:

Mercer County Improvement Authority..... \$10,400,000

2. Repayment of the loan made pursuant to this act shall be made to the "Resource Recovery and Solid Waste Disposal Facility Fund" in accordance with the terms of a written loan agreement. The form of the loan agreement shall be specified by the State Treasurer.

3. The expenditure of the sum appropriated by this act is subject to the provisions and conditions of P.L.1985, c.330.

4. This act shall take effect immediately.

Approved January 7, 1994.

CHAPTER 370

AN ACT concerning certain payments made in connection with the conduct of an election and supplementing chapter 34 of Title 19 of the Revised Statutes.

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

C.19:44A-11.7 Certain payments, check required.

1. Any payment to any individual which is related to efforts by or on behalf of a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee in aid of or to promote the candidacy of an individual for nomination for election or for election to elective public office or the passage or defeat of a public question, or to efforts directly to promote or encourage the participation of voters in an election, including but not limited to payments made to campaign workers and payments to other individuals which are intended for further transfer to election-day workers or other ultimate payees, shall be made by check payable to such named individual, and no such payment shall be made in currency.

Any payment to a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, or to any other person, association or group, by a candidate or any such committee or by any other person, association or group, which payment is related to efforts in aid of or to promote the candidacy of an individual for nomination for election or for election to elective public office or the passage or defeat of a public question, or to efforts directly to promote or encourage the participation of voters in an election, shall be made by check payable to the named committee, person, association, or group, and no such payment shall be made in currency.

As used in this section, "candidate," "candidate committee," "joint candidates committee," "political committee," "continuing political committee," "political party committee," and "legislative leadership committee" shall have the meanings prescribed for those respective terms by section 3 of P.L.1973, c.83 (C.19:44A-3).

2. This act shall take effect immediately.

Approved January 7, 1994.

CHAPTER 371

AN ACT concerning the noncompetitive division of the career service and supplementing Title 11A of the New Jersey Statutes.

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

C.11A:3-2.1 Findings, declarations.

1. The Legislature finds and declares that:

a. the importance of fairness and impartiality in State employment is recognized in Article VII, Section I, paragraph 2 of the New Jersey Constitution which provides that, "Appointments and promotions in the civil service of the State... shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive...";

b. nevertheless, the framers recognized that appointments to certain types of employment are not readily made through a competitive examination process;

c. accordingly, in implementing the constitutional provision, the Legislature has provided in N.J.S.11A:3-2 that the career service shall have a competitive division and a noncompetitive division;

d. it was the purpose of the Legislature, in making this distinction, to provide for positions which cannot properly be tested for, such as lower-level jobs which do not require significant education or experience, to be filled without the need of competitive examination but with civil service protection for the employee;

e. however, recent published reports suggest that the purpose of the noncompetitive division has been subverted by the transfer into that division of titles which properly belong in the unclassified service or in the competitive division of the career service, and the making of appointments thereto;

f. the apparent reason for this misuse of the noncompetitive division is to protect political appointees prior to the beginning of a new administration; and

g. in order to prevent this abuse of the civil service system, there is need for a statutory prohibition on the movement of job titles and political appointees to the noncompetitive division of the career service during the final six months of the Governor's term in office.

C.11A:3-2.2 Certain transfers, appointments prohibited.

2. No title shall be transferred from the State unclassified service or the senior executive service to the noncompetitive division

of the career service and no individual serving in a title in the State unclassified service or the senior executive service shall be transferred to or appointed to the noncompetitive division of the career service during the six-month period immediately preceding the termination of the Governor's four-year term. A transfer or appointment which violates the provisions of this section is void.

3. This act shall take effect immediately and shall be retroactive to July 18, 1993.

Approved January 10, 1994.

CHAPTER 372

AN ACT concerning plenary and farm winery licensees and amending R.S.33:1-10.

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

1. R.S.33:1-10 is amended to read as follows:

Class A licensees; subdivisions; fees.

33:1-10. Class A licenses shall be subdivided and classified as follows:

Plenary brewery license. 1a. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$8,500.00.

Limited brewery license. 1b. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages in a quantity to be expressed in said license, dependent upon the following fees and not in excess of 300,000 barrels of 31 fluid gallons capacity per year and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of

such sale and distribution, and to maintain a warehouse. The fee for this license shall be graduated as follows: to so brew not more than 50,000 barrels of 31 fluid gallons capacity per annum, \$1,000.00; to so brew not more than 100,000 barrels of 31 fluid gallons capacity per annum, \$2,000.00; to so brew not more than 200,000 barrels of 31 fluid gallons capacity per annum, \$4,000.00; to so brew not more than 300,000 barrels of 31 fluid gallons capacity per annum, \$6,000.00.

Restricted Brewery License. 1c. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages in a quantity to be expressed in such license not in excess of 3,000 barrels of 31 fluid gallons capacity per year. Notwithstanding the provisions of R.S.33:1-26, the director shall issue a restricted brewery license only to a person or an entity which has identical ownership to an entity which holds a plenary retail consumption license issued pursuant to R.S.33:1-12, provided that such plenary retail consumption license is operated in conjunction with a restaurant regularly and principally used for the purpose of providing meals to its customers and having adequate kitchen and dining room facilities, and that the licensed restaurant premises is immediately adjoining the premises licensed as a restricted brewery. The holder of this license shall only be entitled to sell or deliver the product to that restaurant premises. The fee for this license shall be \$1,000, which fee shall entitle the holder to brew up to 1,000 barrels of 31 fluid gallons per annum. The licensee also shall pay an additional \$500 for every additional 1,000 barrels of 31 fluid gallons produced. No more than two restricted brewery licenses shall be issued to a person or entity which holds an interest in a plenary retail consumption license. If the governing body of the municipality in which the licensed premises will be located should file a written objection, the director shall hold a hearing and may issue the license only if the director finds that the issuance of the license will not be contrary to the public interest. All fees related to the issuance of both licenses shall be paid in accordance with statutory law.

Plenary winery license. 2a. Provided that the holder is engaged in growing and cultivating grapes or fruit used in the production of wine on at least three acres on, or adjacent to, the winery premises, the holder of this license shall be entitled, subject to rules and regulations, to produce any fermented wines, and to blend, fortify and treat wines, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter and to churches for religious purposes, and to sell and distribute

without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse, and to sell his products at retail to consumers on the licensed premises of the winery for consumption on or off the premises and to offer samples for sampling purposes only. The fee for this license shall be \$750.00. The holder of this license shall also have the right to sell such wine at retail in original packages in five salesrooms apart from the winery premises for consumption on or off the premises and for sampling purposes for consumption on the premises, at a fee of \$200.00 for each salesroom. Additionally, subject to rules and regulations, one salesroom per county may be jointly controlled and operated by at least two plenary or farm winery licensees for the sale of the products of any plenary or farm winery licensee for consumption on or off the premises and for consumption on the licensed premises for sampling purposes, at an additional fee of \$500.00 per county salesroom. For the purposes of this subsection, "sampling" means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one-half ounces of any wine.

For the purposes of this subsection, "product" means any wine that is produced, blended, fortified, or treated by the licensee on its licensed premises situated in the State of New Jersey.

Any holder of a plenary winery license who sold wine which was produced, bottled, and labelled by that holder in a place other than its licensed New Jersey premises between July 1, 1992 and June 30, 1993, may continue to sell that wine provided no more than 25,000 cases, each case consisting of 12 750 milliliter bottles or the equivalent, are sold in any single license year. This privilege shall terminate upon, and not survive, any transfer of the license to another person or entity subsequent to the effective date of this 1993 amendatory act or any transfer of stock of the licensed corporation other than to children, grandchildren, parents, spouses or siblings of the existing stockholders.

Farm winery license. 2b. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines and fruit juices in a quantity to be expressed in said license, dependent upon the following fees and not in excess of 50,000 gallons per year and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter and to churches for religious purposes and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse

and to sell at retail to consumers for consumption on or off the licensed premises and to offer samples for sampling purposes only. The license shall be issued only when the winery at which such fermented wines and fruit juices are manufactured is located and constructed upon a tract of land exclusively under the control of the licensee, provided that the licensee is actively engaged in growing and cultivating an area of not less than three acres on or adjacent to the winery premises and on which are growing grape vines or fruit to be processed into wine or fruit juice; and provided, further, that for the first five years of the operation of the winery such fermented wines and fruit juices shall be manufactured from at least 51% grapes or fruit grown in the State and that thereafter they shall be manufactured from grapes or fruit grown in this State at least to the extent required for labeling as "New Jersey Wine" under the applicable federal laws and regulations. The containers of all wine sold to consumers by such licensee shall have affixed a label stating such information as shall be required by the rules and regulations of the Director of the Division of Alcoholic Beverage Control. The fee for this license shall be graduated as follows: to so manufacture between 30,000 and 50,000 gallons per annum, \$300.00; to so manufacture between 2,500 and 30,000 gallons per annum, \$200.00; to so manufacture between 1,000 and 2,500 gallons per annum, \$100.00; to so manufacture less than 1,000 gallons per annum, \$50.00. No farm winery license shall be held by the holder of a plenary winery license or be situated on a premises licensed as a plenary winery.

The holder of this license shall also have the right to sell his products in original packages at retail to consumers in five salesrooms apart from the winery premises for consumption on or off the premises, and for sampling purposes for consumption on the premises, at a fee of \$200.00 for each salesroom. Additionally, subject to rules and regulations, one salesroom per county may be jointly controlled and operated by at least two plenary or farm winery licensees for the sale of the products of any plenary or farm winery licensee for consumption on or off the premises and for consumption on the licensed premises for sampling purposes, at an additional fee of \$500.00 per county salesroom. For the purposes of this subsection, "sampling" means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one-half ounces of any wine.

Unless otherwise indicated, for the purposes of this subsection, with respect to farm winery licenses, "manufacture" means the

vinification, aging, storage, blending, clarification, stabilization and bottling of wine or juice from New Jersey fruit to the extent required by this subsection.

Wine blending license. 2c. The holder of this license shall be entitled, subject to rules and regulations, to blend, treat, mix, and bottle fermented wines and fruit juices with non-alcoholic beverages, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$500.00.

Plenary distillery license. 3a. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any distilled alcoholic beverages and rectify, blend, treat and mix, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$10,000.00.

Limited distillery license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to manufacture and bottle any alcoholic beverages distilled from fruit juices and rectify, blend, treat, mix, compound with wine and add necessary sweetening and flavor to make cordial or liqueur, and to sell and distribute to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution and to warehouse these products. The fee for this license shall be \$3,000.00.

Supplementary limited distillery license. 3c. The holder of this license shall be entitled, subject to rules and regulations, to bottle and rebottle, in a quantity to be expressed in said license, dependent upon the following fees, alcoholic beverages distilled from fruit juices by such holder pursuant to a prior plenary or limited distillery license, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be graduated as follows: to so bottle and rebottle not more than 5,000 wine gallons per annum, \$250.00; to so bottle and rebottle not more than 10,000 wine gallons per annum, \$500.00; to so bottle and rebottle without limit as to amount, \$1,000.00.

Rectifier and blender license. 4. The holder of this license shall be entitled, subject to rules and regulations, to rectify, blend, treat and mix distilled alcoholic beverages, and to fortify, blend, and treat fermented alcoholic beverages, and prepare mixtures of alcoholic beverages, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$6,000.00.

Bonded warehouse bottling license. 5. The holder of this license shall be entitled, subject to rules and regulations, to bottle alcoholic beverages in bond on behalf of all persons authorized by federal and State law and regulations to withdraw alcoholic beverages from bond. The fee for this license shall be \$500.00. This license shall be issued only to persons holding permits to operate Internal Revenue bonded warehouses pursuant to the laws of the United States.

2. This act shall take effect immediately.

Approved January 10, 1994.

CHAPTER 373

AN ACT concerning the rate of taxation under the sales and use tax in certain counties, 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-8.45 One-half sales tax rate, counties, certain.

1. Receipts of retail sales, except retail sales of motor vehicles, of alcoholic beverages as defined in the "Alcoholic Beverage Tax Law," R.S.54:41-1 et seq., and cigarettes as defined in the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), made by a vendor from a place of business regularly operated by the vendor for the purpose of making retail sales at which items are regularly exhibited and offered for retail sale and which is not utilized primarily for the purpose of catalogue or mail order

sales, in which county is situated an entrance to an interstate bridge or tunnel connecting New Jersey with a state that does not impose a retail sales and use tax or imposes a retail sales and use tax at a rate at least five percentage points lower than the rate in this State, are exempt 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 State Treasurer shall annually designate the county or counties in which this exemption shall apply.

2. This act shall take effect immediately but section 1 shall remain inoperative until the first day of the sixth month following its enactment.

Approved January 10, 1994.

CHAPTER 374

AN ACT providing for the designation of a children's hospital for certain counties in northern New Jersey and supplementing Title 26 of the Revised Statutes.

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

C.26:2H-18e St. Joseph's Hospital and Medical Center designated acute care children's hospital.

1. a. The Commissioner of Health, subject to the provisions of subsection b. of this section, shall designate St. Joseph's Hospital and Medical Center in the City of Paterson as the State's specialty acute care children's hospital for the counties of Bergen, Morris, Passaic, Sussex and Warren.

b. The designation by the Commissioner of Health pursuant to subsection a. of this section shall be made subsequent to, and shall be contingent upon, the execution of a written agreement between St. Joseph's Hospital and Medical Center and a majority of the acute care hospitals providing inpatient pediatric services which are located in the counties listed in subsection a. of this section.

The written agreement shall state that the other facility recognizes St. Joseph's Hospital and Medical Center as the State's specialty acute care children's hospital for the counties listed in subsection a.

of this section and shall set forth the basis on which the other facility shall make referrals to St. Joseph's Hospital and Medical Center.

2. This act shall take effect on the 30th day after enactment.

Approved January 10, 1994.

CHAPTER 375

AN ACT creating the Higher Education Facilities Trust Fund, supplementing P.L.1970, c.13 (C.5:9-1 et seq.) and chapter 72A 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:72A-49 Short title.

1. This act shall be known and may be cited as the "Higher Education Facilities Trust Fund Act."

C.18A:72A-50 Findings, declarations.

2. The Legislature finds and declares that:

a. Higher education plays a vital role in the economic development of the nation and of the State by providing the education and training of the work force of the future and by advancing science and technology through research.

b. New Jersey has an intense concentration of high technology industries and research facilities and is the headquarters of some of the world's most productive corporations. In the last decade of the 20th century, it has become obvious that New Jersey's institutions of higher education will have to change and improve their educational and research facilities in order not only to prepare students to fill existing jobs in a highly technical world, but also to create new jobs as well.

c. In order for New Jersey students and businesses to be competitive with their international peers, the public and private sectors must continually take steps to enhance the technology and research facilities at our colleges and universities. To do otherwise would result in the failure of New Jersey businesses to remain competitive, a decrease in the number of jobs available to New Jersey workers, a decline in State and personal income, and

the loss of potential students to other, more technologically advanced institutions in other states.

d. If New Jersey is to maintain the expansion of its economic development and continue to provide an adequately trained work force to retain and attract industry to the State, New Jersey's public and private institutions of higher education must be strengthened to provide services to meet the needs of the 21st century.

e. In order to protect the State's economy and preserve and enhance our higher education system in today's global and technological society, there is a crucial need to identify an ongoing funding source to construct, expand, and update instructional, laboratory, communication, and research facilities at New Jersey's public and private institutions of higher education.

C.18A:72A-51 "Higher Education Facilities Trust Fund."

3. There is created within the New Jersey Educational Facilities Authority, established pursuant to N.J.S.18A:72A-1 et seq., the "Higher Education Facilities Trust Fund," hereinafter referred to as the "trust fund." The trust fund shall be maintained as a separate account and administered by the authority to carry out the provisions of this act. The trust fund shall consist of:

a. moneys received from the issuance of bonds or notes pursuant to section 9 of P.L.1993, c.375 (C.18A:72A-57) and an annual appropriation from the net proceeds of the State lottery established by P.L.1970, c.13 (C.5:9-1 et seq.) in an amount sufficient to pay the principal and interest on the bonds or notes;

b. all moneys appropriated by the State for the purposes of the trust fund; and

c. all interest and investment earnings received on moneys in the trust fund.

C.18A:72A-52 Use of trust fund.

4. The trust fund shall be used to provide grants to New Jersey's public and private institutions of higher education for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, and improvement of instructional, laboratory, communication, and research facilities.

C.18A:72A-53 Allocation of initial grants.

5. The initial grants from the trust fund shall be allocated as follows:

a. \$48,000,000 for facilities at the State Colleges;

b. \$38,880,000 for facilities at Rutgers, The State University;

c. \$20,160,000 for facilities at the University of Medicine and Dentistry of New Jersey;

d. \$12,960,000 for facilities at the New Jersey Institute of Technology;

e. \$44,000,000 for facilities at the county colleges;

f. \$21,000,000 for facilities at the private institutions of higher education;

g. \$15,000,000 for South Jersey multi-institutional economic development facilities. As used in this section, "South Jersey multi-institutional economic development facilities" means facilities which would promote economic development in the eight southernmost counties of the State and which involve more than one public or private institution of higher education; and

h. \$20,000,000 for a new facility for Rutgers, The State University, School of Law, Newark.

The amount authorized in subsection g. may be apportioned among any other amounts authorized in subsections a. through f. of this section.

The Board of Higher Education may reallocate any balance in an amount authorized in subsections a. through h. of this section which has not been approved by the board for a grant within 18 months of the effective date of this act.

The Board of Higher Education shall determine the allocation of moneys deposited into the trust fund resulting from the issuance by the authority of new bonds because of the retirement of bonds previously issued by the authority.

The facilities funded by grants from the trust fund shall follow the principles of affirmative action and equal opportunity employment. In furtherance of these principles, the Board of Higher Education shall continue its policy of encouraging institutions to solicit bids from, and award contracts to, minority and women-owned businesses.

C.18A:72A-54 Application for grant.

6. a. The governing board of a public or private institution of higher education may determine, by resolution, to apply for a grant from the trust fund. Upon adoption of the resolution, the board shall file an application with the Board of Higher Education, which application shall include a complete description of the project to be financed and an identification of any additional sources of revenue to be used.

b. The Board of Higher Education shall review the application and, by resolution, approve or disapprove the grant. For each grant which is approved, the board shall establish the amount and

shall forward a copy of the resolution along with the amount of the grant to the authority.

c. The Board of Higher Education shall submit to the Legislature a copy of the resolution approving the grant along with the amount of the grant. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days, the grant shall be deemed to be authorized. In addition, the resolution approving the grant for the new instructional and research facility for Rutgers, The State University, School of Law, Newark, shall be submitted by the board to the Joint Budget Oversight Committee for its approval prior to the board's submission of the resolution to the Legislature. The board shall provide to the committee such information concerning the grant as the committee may require for its consideration.

d. Each grant awarded under this act shall be contingent upon the recipient governing board entering into a contract or contracts for the commencement of the construction, reconstruction, development, extension, or improvement of the facility within one year of the date on which the funds of the grant are made available.

C.18A:72A-55 List of selection criteria.

7. In order to ensure the most effective utilization of the moneys in the trust fund and to guide governing boards which elect to apply for a grant, the Board of Higher Education shall establish a list of selection criteria and shall specify the information to be included in a grant application.

C.18A:72A-56 "Higher Education Facilities Trust Fund Board."

8. In order to ensure proper oversight and review, there is created the "Higher Education Facilities Trust Fund Board" which shall consist of six members as follows: the Chair and Vice Chair of the Board of Higher Education; the State Treasurer or a designee; the President of the Senate or a designee; the Speaker of the General Assembly or a designee; and the Chancellor of Higher Education who shall serve *ex officio* without vote. The board shall ensure that the revenue provided to the trust fund is adequate to support the grants approved by the Board of Higher Education. At the end of each three-year period following the approval of this act, the board shall review, in consultation with the Board of Higher Education, the physical plant needs of public and private institutions of higher education in the State and shall recommend to the Governor and the Legislature a plan to

increase, as necessary, the availability and uses of grants made from the trust fund.

C.18A:72A-57 Issuance of bonds, notes.

9. a. The authority shall from time to time issue bonds or notes in an amount sufficient to finance the grants provided under this act and to finance the administrative costs associated with the approval process and the issuance of the bonds or notes, except that the total outstanding principal amount of the bonds or notes shall not exceed \$220,000,000 and the term of any bond issued shall not exceed 10 years. In computing the foregoing limitation as to amount, there shall be excluded all bonds which shall be issued for refunding purposes, provided that the refunding shall be determined by the authority to result in a debt service savings. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of P.L.1993, c.375 (C.18A:72A-49 et al.) and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq., provided that no bonds or notes shall be issued pursuant to this section without the prior written consent of the State Treasurer.

b. Bonds or notes issued pursuant to this act shall not be in any way a debt or liability of the State or of any political subdivision thereof other than the authority and shall not create or constitute any indebtedness, liability or obligation of the State or of any political subdivision thereof, or be or constitute a pledge of the faith and credit of the State or of any political subdivision thereof, but all bonds or notes, unless funded or refunded by the bonds or notes of the authority, shall be payable solely from revenues of funds pledged or available for their payment as authorized by this act. Each bond shall contain on its face a statement to the effect that the authority is obligated to pay the principal thereof, redemption premium, if any, or the interest thereon only from revenue or funds of the authority and that neither the State nor any political subdivision thereof is obligated to pay the principal thereof, redemption premium, if any, or interest thereon and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of, redemption premium, if any, or the interest on the bonds.

c. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to the authorization of P.L.1993, c.375 (C.18A:72A-49

et al.) that the State shall not limit or alter the rights or powers hereby vested in the authority to perform and fulfill the terms of any agreement made with the holders of the bonds or notes, or to fix, establish, charge and collect such rents, fees, rates, payments, or other charges as may be convenient or necessary to produce sufficient revenues to meet all expenses of the authority and to fulfill the terms of any agreement made with the holders of the bonds and notes, together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders, until the bonds and notes, together with interest thereon, are fully met and discharged or provided for.

C.5:9-22.2 State aid for higher education facilities trust fund.

10. For the purposes of P.L.1970, c.13 (C.5:9-1 et seq.), any trust fund established to provide grants to New Jersey's public and private institutions of higher education for the construction, reconstruction, development, extension, and improvement of instructional, laboratory, communication, and research facilities shall be considered eligible for State aid from the net proceeds of any State lottery, as shall be provided by law.

C.18A:72A-58 Rules, regulations.

11. The Board of Higher Education, in consultation with the New Jersey Educational Facilities Authority, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations necessary to carry out the provisions of this act.

12. This act shall take effect immediately.

Approved January 10, 1994.

CHAPTER 376

AN ACT concerning certain stream cleaning activities by governmental entities and supplementing P.L.1962, c.19 (C.58:16A-50 et seq.).

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

C.58:16A-67 Written notice of intent to undertake a project to clean, clear, desnag stream.

1. a. The provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a county or municipality, or designated agency thereof, before undertaking any project to clean, clear, or desnag a stream within its jurisdiction, shall submit to the Department of Environmental Protection or to any State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing or desnagging project, a written notice of intent to undertake a project to clean, clear, or desnag a stream and a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that:

(1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or desnagging;

(2) the removal of any material will not extend below the natural stream bed;

(3) the activities will not alter the natural streambanks;

(4) the activities will consist of the removal only of accumulated debris and garbage 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;

(5) every effort will be made to perform work from only one streambank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and

(6) the activities are necessary and in the public interest.

The notice shall also include a description of the nature of the project, a description, including a photograph, of the reach of the stream in which the activity is to take place, and an identification of the regulatory water quality classification of the stream in which the activity is to take place. The reach of the stream may be provided by the submission of a photostatic copy of the United States Geological Survey topographic quadrangle.

b. Upon receipt of a notice and certification submitted pursuant to this section, the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing or desnagging project, as the case may be, shall have 30 days to notify the county or municipality, or designated agency thereof, if particular circumstances mandate that the stream cleaning not be done in this particular case. If the department, or any other State agency requiring a stream cleaning

permit or an application for the proposed stream cleaning, clearing or desnagging project, as the case may be, makes such a determination, it shall provide the county or municipality, or designated agency thereof, with the technical reasons therefor.

c. Any person or governmental entity violating the provisions of this act shall be subject to penalties imposed for violations of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

2. This act shall take effect immediately.

Approved January 11, 1994.

CHAPTER 377

AN ACT concerning certain applicants for licensure as insurance producers and supplementing P.L.1987, c.293 (C.17:22A-1 et seq.).

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

1. Notwithstanding any of the provisions of P.L.1987, c.293 (C.17:22A-1 et seq.), or any other law to the contrary, an applicant seeking a resident insurance producer license under title insurance authority shall be exempt from the educational and examination requirements set forth in subsections c. and d. of section 4 of P.L.1987, c.293 (C.17:22A-4), if the applicant presents to the Commissioner of Insurance satisfactory evidence of ten or more years of prior experience selling title insurance.

2. This act shall take effect immediately and shall expire 180 days following the date of enactment.

Approved January 11, 1994.

CHAPTER 378

AN ACT concerning certain prescription drug plans and supplementing P.L.1938, c.366 (C.17:48-1 et seq.), P.L.1940, c.74 (C.17:48A-1 et seq.), P.L.1985, c.236 (C.17:48E-1 et seq.), chapter 26 of Title 17B of the New Jersey Statutes, chapter 27 of Title 17B of the New Jersey Statutes, and P.L.1973, c.337 (C.26:2J-1 et seq.).

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

C.17:48-6j Requirements for hospital service corporation providing benefits for pharmacy services.

1. a. Notwithstanding any other provision of law to the contrary, no group or individual hospital service corporation contract which provides benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the contract:

(1) Permits the subscriber, at the time of issuance, amendment or renewal, to select benefit coverage allowing the subscriber to choose a pharmacy or pharmacist for the provision of prescription drugs or pharmacy services, provided that any pharmacist or pharmacy selected by the subscriber is registered pursuant to R.S.45:14-1 et seq.;

(2) Provides that no pharmacy or pharmacist shall be denied the right to participate as a preferred provider or as a contracting provider, if the contract provides for coverage by contracted or preferred providers, provided the pharmacy or pharmacist is registered pursuant to R.S.45:14-1 et seq., and accepts the terms of the contract;

(3) Provides that no copayment, fee, or other condition shall be imposed upon a subscriber selecting a participating or contracting pharmacist or pharmacy that is not also equally imposed upon all subscribers selecting a participating or contracting pharmacist or pharmacy; and

(4) Provides that no subscriber shall be required to obtain pharmacy services and prescription drugs from a mail order pharmacy.

b. Nothing in this section shall be construed to operate to add any benefit, to increase the scope of any benefit, or to increase any benefit level under any contract.

c. This section shall apply to all hospital service corporation contracts in which the hospital service corporation has reserved the right to change the subscriber charge.

C.17:48A-7i Requirements for medical service corporation providing benefits for pharmacy services.

2. a. Notwithstanding any other provision of law to the contrary, no group or individual medical service corporation contract which provides benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, shall be delivered, issued, executed or renewed in this State or approved

for issuance in this State on or after the effective date of this act, unless the contract:

(1) Permits the subscriber, at the time of issuance, amendment or renewal, to select benefit coverage allowing the subscriber to choose a pharmacy or pharmacist for the provision of prescription drugs or pharmacy services, provided that any pharmacist or pharmacy selected by the subscriber is registered pursuant to R.S.45:14-1 et seq.;

(2) Provides that no pharmacy or pharmacist shall be denied the right to participate as a preferred provider or as a contracting provider, if the contract provides for coverage by contracted or preferred providers, provided the pharmacy or pharmacist is registered pursuant to R.S.45:14-1 et seq., and accepts the terms of the contract;

(3) Provides that no copayment, fee, or other condition shall be imposed upon a subscriber selecting a participating or contracting pharmacist or pharmacy of his own choice, that is not also equally imposed upon all subscribers selecting a participating or contracting pharmacist or pharmacy; and

(4) Provides that no subscriber shall be required to obtain pharmacy services and prescription drugs from a mail order pharmacy.

b. Nothing in this section shall be construed to operate to add any benefit, to increase the scope of any benefit, or to increase any benefit level under any contract.

c. This section shall apply to all medical service corporation contracts in which the medical service corporation has reserved the right to change the subscriber charge.

C.17:48E-35.7 Requirements for health service corporation providing benefits for pharmacy services.

3. a. Notwithstanding any other provisions of law to the contrary, no group or individual health service corporation contract which provides benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the contract:

(1) Permits the subscriber, at the time of issuance, amendment or renewal, to select benefit coverage allowing the subscriber to choose a pharmacy or pharmacist for the provision of prescription drugs or pharmacy services, provided that any pharmacist or pharmacy selected by the subscriber is registered pursuant to R.S.45:14-1 et seq.;

(2) Provides that no pharmacy or pharmacist shall be denied the right to participate as a preferred provider or as a contracting provider,

if the contract provides for coverage by contracted or preferred providers, provided the pharmacy or pharmacist is registered pursuant to R.S.45:14-1 et seq., and accepts the terms of the contract;

(3) Provides that no copayment, fee, or other condition shall be imposed upon a subscriber selecting a participating or contracting pharmacist or pharmacy that is not also equally imposed upon all subscribers selecting a participating or contracting pharmacist or pharmacy; and

(4) Provides that no subscriber shall be required to obtain pharmacy services and prescription drugs from a mail order pharmacy.

b. Nothing in this section shall be construed to operate to add any benefit, to increase the scope of any benefit, or to increase any benefit level under any contract.

c. This section shall apply to all health service corporation contracts in which the health service corporation has reserved the right to change the subscriber charge.

C.17B:26-2.1i Requirements for individual health insurer providing benefits for pharmacy services.

4. a. Notwithstanding any other provision of law to the contrary, no individual health insurance policy which provides benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State on or after the effective date of this act, unless the policy:

(1) Permits the insured, at the time of issuance, amendment or renewal, to select benefit coverage allowing the insured to choose a pharmacy or pharmacist for the provision of prescription drugs or pharmacy services, provided that any pharmacist or pharmacy selected by the insured is registered pursuant to R.S.45:14-1 et seq.;

(2) Provides that no pharmacy or pharmacist shall be denied the right to participate as a preferred provider or as a contracting provider, if the policy provides for coverage by contracted or preferred providers, provided the pharmacy or pharmacist is registered pursuant to R.S.45:14-1 et seq., and accepts the terms of the policy;

(3) Provides that no copayment, fee, or other condition shall be imposed upon an insured selecting a participating or contracting pharmacist or pharmacy that is not also equally imposed upon all insureds selecting a participating or contracting pharmacist or pharmacy; and

(4) Provides that no insured shall be required to obtain pharmacy services and prescription drugs from a mail order pharmacy.

b. Nothing in this section shall be construed to operate to add any benefit, to increase the scope of any benefit, or to increase any benefit level under any policy.

c. This section shall apply to all individual health insurance policies in which the insurer has reserved the right to change the premium.

C.17B:27-46.1i Requirements for group health insurer providing benefits for pharmacy services.

5. a. Notwithstanding any other provision of law to the contrary, no group health insurance policy which provides benefits for pharmacy services, prescription drugs, or for participation in a prescription drug plan, shall be delivered, issued, executed or renewed in this State, or approved for issuance or renewal in this State, on or after the effective date of this act, unless the policy:

(1) Permits the insured, at the time of issuance, amendment or renewal, to select benefit coverage allowing the insured to choose a pharmacy or pharmacist for the provision of prescription drugs or pharmacy services, provided that any pharmacist or pharmacy selected by the insured is registered pursuant to R.S.45:14-1 et seq.;

(2) Provides that no pharmacy or pharmacist shall be denied the right to participate as a preferred provider or as a contracting provider, if the policy provides for coverage by contracted or preferred providers, provided the pharmacy or pharmacist is registered pursuant to R.S.45:14-1 et seq., and accepts the terms of the policy;

(3) Provides that no copayment, fee, or other condition shall be imposed upon an insured selecting a participating or contracting pharmacist or pharmacy that is not also equally imposed upon all insureds selecting a participating or contracting pharmacist or pharmacy; and

(4) Provides that no insured shall be required to obtain pharmacy services and prescription drugs from a mail order pharmacy.

b. Nothing in this section shall be construed to operate to add any benefit, to increase the scope of any benefit, or to increase any benefit level under any policy.

c. This section shall apply to all group health insurance policies in which the insurer has reserved the right to change the premium.

C.26:2J-4.7 Requirements for health maintenance organization providing benefits for pharmacy services.

6. a. Notwithstanding any provision of law to the contrary, a certificate of authority to establish and operate a health maintenance organization in this State shall not be issued or continued on or after the effective date of this act for a health maintenance orga-

nization which provides pharmacy services, prescription drugs, or a prescription drug plan, unless the coverage for health care services:

(1) Permits the enrollee, at the time of enrollment, to select benefit coverage allowing the enrollee to choose a pharmacy or pharmacist for the provision of prescription drugs or pharmacy services, provided that any pharmacist or pharmacy selected by the enrollee is registered pursuant to R.S.45:14-1 et seq.;

(2) Provides that no pharmacy or pharmacist shall be denied the right to participate as a preferred provider or as a contracting provider, if the health maintenance organization provides for coverage by contracted or preferred providers, provided the pharmacy or pharmacist is registered pursuant to R.S.45:14-1 et seq., and accepts the terms of the health maintenance organization;

(3) Provides that no copayment, fee, or other condition shall be imposed upon an enrollee selecting a participating or contracting pharmacist or pharmacy that is not also equally imposed upon all enrollees selecting a participating or contracting pharmacist or pharmacy; and

(4) Provides that no enrollee shall be required to obtain pharmacy services and prescription drugs from a mail order pharmacy.

b. Nothing in this section shall be construed to operate to add any coverage for health care services, to increase the scope of any coverage for health care services, or to increase the level of any health care services provided by a health maintenance organization.

c. This section shall apply to health maintenance organization plans in which the right to change the enrollee charge has been reserved.

7. This act shall take effect on the 180th day after enactment.

Approved January 11, 1994.

CHAPTER 379

AN ACT concerning bad checks 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:32A-1 Civil action for bad checks.

1. a. Notwithstanding N.J.S.2C:21-5, or any other criminal sanction which may apply, any person who makes any check, draft, or order of withdrawal for the payment of money which is

subsequently dishonored for lack of funds or credit to pay, or because the maker does not have an account with the drawee, and who then fails to pay the face amount in cash or by cashier's or certified check within 35 days after the date a demand for payment of dishonored check notice was mailed by or on behalf of a payee by certified mail to the maker's last known address, shall be liable to the payee, in addition to the amount owing upon the check, draft or order, for attorneys' fees, court costs and the costs of mailing the written demand for payment and for damages in an amount equal to \$100 or triple the amount for which the check, draft or order is drawn or made, whichever is greater. However, damages recovered under this section shall not exceed by more than \$500 the amount of the check, draft or order.

For purposes of this section, "date" means the date indicated on the form registering the demand notice as certified mail.

b. A cause of action under this section may be brought in any court of competent jurisdiction. Prior to the hearing of any action under this section, the defendant may tender to the plaintiff and the plaintiff shall accept as satisfaction of the claim, an amount of money equal to the sum of the face amount of the check, draft, or order and the incurred attorneys' fees, court costs and costs of mailing the written demand for payment.

c. The written demand for payment required by this section shall be in the following form and shall be printed in both the English and Spanish languages:

DEMAND FOR PAYMENT OF DISHONORED CHECK

DATE:

TO:

NAME OF MAKER

.....

.....

.....

LAST KNOWN

RESIDENCE ADDRESS

OR PLACE OF BUSINESS

WARNING: YOU MAY BE
SUED IF YOU DO NOT MAKE
PAYMENT OF THE AMOUNT
SHOWN ON THIS NOTICE
WITHIN 35 DAYS AFTER
THE DATE THIS NOTICE
WAS MAILED.

YOUR CHECK/DRAFT/ORDER IN THE AMOUNT OF \$..... DATED....., PAYABLE TO THE ORDER OF HAS BEEN DISHONORED BY THE BANK OR OTHER DEPOSITORY UPON WHICH IT HAS BEEN DRAWN BECAUSE:

....THE MAKER HAD NO ACCOUNT WITH SUCH BANK OR DEPOSITORY

....THE MAKER HAD INSUFFICIENT FUNDS ON DEPOSIT WITH SUCH BANK OR DEPOSITORY

IF YOU DO NOT MAKE PAYMENT WITHIN 35 DAYS AFTER THE DATE THIS NOTICE WAS MAILED, YOU MAY BE SUED TO RECOVER PAYMENT. IF A JUDGMENT IS RENDERED AGAINST YOU IN COURT, IT WILL INCLUDE NOT ONLY THE ORIGINAL FACE AMOUNT OF THE CHECK/DRAFT/ORDER, BUT ALSO ADDITIONAL LIQUIDATED DAMAGES OF NOT LESS THAN ONE HUNDRED DOLLARS (\$100) NOR MORE THAN THE FACE AMOUNT OF THE CHECK/DRAFT/ORDER PLUS FIVE HUNDRED DOLLARS (\$500).

PLEASE MAKE PAYMENT IN THE AMOUNT OF \$.....TO:

.....
NAME OF PAYEE

.....
.....
.....
ADDRESS TO WHICH
PAYMENT SHOULD BE
DELIVERED

d. If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury may waive all or part of the statutory damages. However, if the court or jury waives all or part of the statutory damages, the court shall render judgment against the defendant in the amount of the dishonored check plus incurred attorneys' fees, court costs and costs of mailing the written demand for payment.

2. This act shall take effect on the 60th day after enactment.

Approved January 11, 1994.

CHAPTER 380

AN ACT concerning the establishment of residency for the purpose of public education and amending N.J.S.18A:38-1.

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

1. N.J.S.18A:38-1 is amended to read as follows:

Attendance at school free of charge.

18A:38-1. Public schools shall be free to the following persons over five and under 20 years of age:

- a. Any person who is domiciled within the school district;
- b. (1) Any person who is kept in the home of another person domiciled within the school district and is supported by such other person gratis as if he were such other person's own child, upon filing by such other person with the secretary of the board of education of the district, if so required by the board, a sworn statement that he is domiciled within the district and is supporting the child gratis and will assume all personal obligations for the child relative to school requirements and that he intends so to keep and support the child gratuitously for a longer time than merely through the school term, and a copy of his lease if a tenant, or a sworn statement by his landlord acknowledging his tenancy if residing as a tenant without a written lease, and upon filing by the child's parent or guardian with the secretary of the board of education a sworn statement that he is not capable of supporting or providing care for the child due to a family or economic hardship and that the child is not residing with the resident of the district solely for the purpose of receiving a free public education within the district. The statement shall be accompanied by documentation to support the validity of the sworn statements, information from or about which shall be supplied only to the board and only to the extent that it directly pertains to the support or nonsupport of the child. If in the judgment of the board of education the evidence does not support the validity of the claim by the resident, the board may deny admission to the child. The resident may contest the board's decision to the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner on the validity of the claim and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under

the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the resident in writing of his right to contest the board's decision to the commissioner within 21 days. No child shall be denied admission during the pendency of the proceedings before the commissioner. In the event the child is currently enrolled in the district, the student shall not be removed from school during the 21-day period in which the resident may contest the board's decision nor during the pendency of the proceedings before the commissioner. If in the judgment of the commissioner the evidence does not support the claim of the resident, he shall assess the resident tuition for the student prorated to the time of the student's ineligible attendance in the school district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced. Nothing shall preclude a board from collecting tuition from the resident, parent or guardian for a student's period of ineligible attendance in the schools of the district where the issue is not appealed to the commissioner;

(2) If the superintendent or administrative principal of a school district finds that the parent or guardian of a child who is attending the schools of the district is not domiciled within the district and the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person's own child as provided for in paragraph (1) of this subsection, the superintendent or administrative principal may apply to the board of education for the removal of the child. The parent or guardian shall be entitled to a hearing before the board and if in the judgment of the board the parent or guardian is not domiciled within the district or the child is not kept in the home of another person domiciled within the school district and supported by him gratis as if the child was the person's own child as provided for in paragraph (1) of this subsection, the board may order the transfer or removal of the child from school. The parent or guardian may contest the board's decision before the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner and shall have the burden of proof by a preponderance of the evidence that the child is eligible for a free education under the criteria listed in this subsection. The board of education shall, at the time of its decision, notify the parent or guardian in writing of his right to contest the decision within 21 days. No child shall be removed from school during the 21-day period in which the parent may contest the board's decision

or during the pendency of the proceedings before the commissioner. If in the judgment of the commissioner the evidence does not support the claim of the parent or guardian, the commissioner shall assess the parent or guardian tuition for the student prorated to the time of the student's ineligible attendance in the schools of the district. Tuition shall be computed on the basis of 1/180 of the total annual per pupil cost to the local district multiplied by the number of days of ineligible attendance and shall be collected in the manner in which orders of the commissioner are enforced. Nothing shall preclude a board from collecting tuition from the parent or guardian for a student's period of ineligible attendance in the schools of the district where the issue is not appealed to the commissioner;

c. Any person who fraudulently allows a child of another person to use his residence and is not the primary financial supporter of that child and any person who fraudulently claims to have given up custody of his child to a person in another district commits a disorderly persons offense;

d. Any person whose parent or guardian, even though not domiciled within the district, is residing temporarily therein, but any person who has had or shall have his all-year-round dwelling place within the district for one year or longer shall be deemed to be domiciled within the district for the purposes of this section;

e. Any person for whom the Division of Youth and Family Services in the Department of Human Services is acting as guardian and who is placed in the district by said bureau;

f. Any person whose parent or guardian moves from one school district to another school district as a result of being homeless and whose district of residence is determined pursuant to section 19 of P.L.1979, c.207 (C.18A:7B-12).

2. This act shall take effect immediately.

Approved January 11, 1994.

CHAPTER 381

AN ACT concerning long-term contracts between certain municipalities and private firms for the provision of water supply facilities and water supply services, amending P.L.1971, c.198 and supplementing Title 58 of the Revised Statutes.

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

C.58:28-1 Definitions.

1. As used in this act:

“Private firm” means a corporation or other business entity that owns or operates, as of the effective date of this act, an industrial facility engaging in manufacturing operations having a Standard Industrial Classification number within 20-39 inclusive and is financially, technically, and administratively capable of financing, planning, designing, constructing, operating, or maintaining, or any combination thereof, water supply facilities, or of providing water supply services to a public entity under the terms of a partnership agreement awarded pursuant to the provisions of this act;

“Water supply facility” means 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, as an industrial water supply system jointly owned or operated by two or more private firms, which individually or collectively possess, as of the effective date of this act, a water diversion for said system in excess of fifteen million gallons per day (mgd) under an existing water allocation permit granted by the Department of Environmental Protection pursuant to the “Water Supply Management Act,” P.L.1981, c.262 (C.58:1A-1 et al.), 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;

“Water supply services” means services provided by a water supply facility.

C.58:28-2 Contracts with private firms for water supply.

2. The provisions of any other law, rule or regulation to the contrary notwithstanding, a single municipality which owns and operates a municipal water utility system may, within six months of the effective date of this act, enter into a contract not exceeding 40 years with a private firm for the acquisition of an equitable interest, not to exceed 50 percent, in a water supply facility for

the provision of water supply services to those customers located exclusively within the boundaries of the contracting municipality or such other customers served by the contracting municipality as of the effective date of this act, which may include the financing, construction, operation or maintenance, or any combination thereof, of a water supply facility. This act shall not apply to any contract entered into by more than one municipality.

C.58:28-3 Contracts exempt from certain regulation.

3. a. Any partnership or copartnership agreement entered into after the effective date of this act pursuant to a contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2) involving a private firm not previously subject to the jurisdiction of the Board of Regulatory Commissioners or its predecessor organizations shall not be considered a public utility for the purposes of R.S.48:2-13 and shall not be subject to oversight by the Board of Regulatory Commissioners.

b. Any transaction undertaken by a partnership or copartnership established pursuant to a contract authorized under section 2 of P.L.1993, c.381 (C.58:28-2) shall be subject to oversight and approval of the Department of Environmental Protection, and shall be subject to the permit system established pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et al.), except that any proposed modification to the existing water allocation permit of a water supply facility, relating to the transaction, that would authorize the transfer to a municipality of up to one-third of the quantity of water allocated by the existing permit shall be deemed to be automatically approved pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et al.).

c. Any agreement entered into by a partnership or copartnership established pursuant to section 2 of P.L.1993, c.381 (C.58:28-2) shall not be subject to the provisions of the "New Jersey Water Supply Privatization Act," P.L.1985, c.37 (C.58:26-1 et seq.).

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

C.40A:11-5 Exceptions.

5. Exceptions. Any purchase, contract or agreement of the character described in section 4 of P.L.1971, c.198 (C.40A:11-4) may be made, negotiated or awarded by the governing body without public advertising for bids and bidding therefor 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 a newspaper authorized by law to publish its legal advertisements, 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, where possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations 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 party may be a party;

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

(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 Regulatory Commissioners or the U.S. 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) Election expenses;
- (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 service or the furnishing of materials 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) Homemaker--home health services performed by voluntary, nonprofit agencies;
- (q) The purchase of materials and services for a law library established pursuant to R.S.40:33-14, including books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, copyright and patent materials, maps, charts, globes, sound recordings, slides, films, filmscripts, video and magnetic tapes, and other audiovisual, printed, or published material of a similar nature; necessary binding or rebinding of law library materials; and specialized library 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) Emergency medical services provided by a hospital to the residents of a municipality or county, provided that: (a) such exception be allowed only after the governing body determines that the emergency services are available only from one provider; and (b) if the contract is awarded without advertising for bids or bidding the governing body shall in each instance state supporting reasons for its action in a resolution awarding the contract and cause to be printed once in a newspaper authorized by law to publish its legal advertisements a brief notice stating the nature, duration, service, and amount of the contract; and (c) the contract shall be kept on file for public inspection in the office of the clerk of the municipality;

(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 provision of the "Local Public Contracts Law" and without regard for the value of the contract therefor. Each of the aforementioned means of contracting shall be subject to any regulations adopted by the Commissioner of Insurance pursuant to section 60 of P.L.1990, c.8 (C.17:33B-47);

(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. §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; or

(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 this act.

(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 and any other state or subdivision thereof.

(3) The contracting agent has advertised for bids pursuant to section 4 on two occasions and (a) has received no bids on both occasions in response to its advertisement, or (b) the governing body has rejected such bids on two occasions because the contracting agent 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 occa-

sion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract or agreement 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 or agreement; provided, however, that:

(i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent materials or supplies, 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 or agreement are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of this act; 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 or agreement; 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 or agreement 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 supplier, and is a reasonable price for such work, materials, supplies 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.

5. 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 purchases, contracts or agreements for the performing of work or the furnishing of materials, supplies or services shall be made for a period not to exceed 12 consecutive months, except that contracts or agreements may be entered into for longer periods of time as follows:

(1) Supplying of:

(a) Fuel for heating purposes, for any term not exceeding in the aggregate, two years;

(b) Fuel or oil for use of airplanes, automobiles, motor vehicles or equipment for any term not exceeding in the aggregate, two years;

(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 Regulatory Commissioners. 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 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 three years;

(6) Insurance, 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 three years; provided, however, such contracts shall be

entered into 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 telephone company which is subject to the jurisdiction of the Board of Regulatory Commissioners 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 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 performance of work or services or the furnishing of materials or supplies 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 10 years; provided, however, that such contracts shall be entered into only subject to and in accordance with rules and regulations promulgated by the Department of Environmental Protection establishing a methodology for computing energy cost savings;

(13) The performance of work or services or the furnishing of materials or supplies for the purpose of elevator maintenance for any term not exceeding three years;

(14) Leasing or servicing of electronic communications equipment for a period not to exceed five years; provided, however, such contract shall be entered into 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;

(15) Leasing of motor vehicles, machinery and other equipment primarily used to fight fires, for a term not to exceed seven 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 Regulatory Commissioners, and the Department of Environmental Protection pursuant to P.L.1985, c.37 (C.58:26-1 et al.), except for those contracts otherwise exempted pursuant to subsection (30) or (31) 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 solid waste disposal services by a resource recovery facility, the furnishing of products of a resource recovery facility, the disposal of the solid waste delivered for disposal which cannot be processed by a resource recovery facility or the waste products resulting from the operation of 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, the Board of Regulatory Commissioners, and the Department of Environmental Protection; and when the facility is in conformance with a 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 solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or for energy production;

(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 Regulatory Commissioners, and when the facility is in conformance with a 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 solid waste 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.). 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 materials or services for the purpose of lighting public streets, for a term not to exceed five years, provided that the rates, fares, tariffs or charges for the supplying of electricity for that purpose are approved by the Board of Regulatory Commissioners;

(21) In the case of a contracting unit which is a county or municipality, the provision of emergency medical services by a hospital to residents of a municipality or county as appropriate 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 Regulatory Commissioners, 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. §796, by a contracting unit engaged in the generation of electricity for retail sale, as of the date of this amendatory act, 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 prehospita! care, which includes but need not be limited to patient stabilization, airway clearance, cardiopulmonary resuscitation, hemorrhage control, initial wound care and fracture stabilization;

(26) Claims administration services, for any term not to exceed three years;

(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. §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), for any term of not more than forty years; and

(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.

All multiyear leases and contracts entered into pursuant to this section, except contracts for the leasing or servicing of equipment supplied by a telephone company which is subject to the jurisdiction of the Board of Regulatory Commissioners, 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 and agreements for the provision of work 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) 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) 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, 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 shall adopt and promulgate rules and regulations concerning the methods of accounting for all contracts that do not coincide with the fiscal year.

6. This act shall take effect immediately.

Approved January 11, 1994.

CHAPTER 382

AN ACT concerning the liability of certain persons for discharges of petroleum into the waters and amending P.L.1991, c.260.

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

1. Section 1 of P.L.1991, c.260 (C.58:10-23.11g3) is amended to read as follows:

C.58:10-23.11g3 No liability for cleanup and removal costs for actions taken with respect to discharge of petroleum.

1. a. Notwithstanding the provisions of section 8 of P.L.1976, c.141 (C.58:10-23.11g) or any other law, including common law, to the contrary, a person is not liable for any cleanup and removal costs or damages of any kind, direct or indirect no matter by whom sustained, which result from actions taken or not taken in the course of rendering care, assistance, or advice with respect to the discharge or threatened discharge of petroleum into the State's surface waters where the care, assistance, or advice is consistent with or pursuant to any of the following:

- (1) the federal National Contingency Plan prepared pursuant to 33 U.S.C. §1321;
- (2) a State contingency plan;

- (3) a State or federal vessel-specific contingency plan;
 - (4) the direction of a federal on-scene coordinator or an appropriate State official; or
 - (5) the emergency request of a person who is attempting to prevent the threatened discharge of petroleum from a vessel or who is otherwise liable for cleanup and removal costs of the initial discharge from the vessel pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), provided that a person rendering care, assistance, or advice shall provide notification of the threatened discharge or emergency, to the extent actually known to such person, to the United States Coast Guard or an appropriate federal or State official, as soon as practicable (although not of necessity before rendering care, assistance or advice) in the event such person is attempting to unload petroleum from a vessel to prevent or mitigate a discharge, or to tow, push, maneuver or otherwise physically move a vessel transporting petroleum to end the emergency.
- b. The defense from liability granted pursuant to subsection a. of this section shall not apply (1) to a person otherwise liable for cleanup and removal costs of the initial discharge pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g), (2) with respect to personal injury or wrongful death, or (3) if the person is grossly negligent or engages in willful misconduct.
 - c. A person liable for the initial discharge or threat of discharge pursuant to subsection c. of section 8 of P.L.1976, c.141 (C.58:10-23.11g) is liable for any cleanup and removal costs and damages that another person is relieved of under this section.
 - d. Nothing in this section shall limit other defenses or immunities to liability that may exist in P.L.1976, c.141.
 - e. For the purposes of this section "petroleum" does not include dredged spoil.

2. This act shall take effect immediately.

Approved January 11, 1994.

CHAPTER 383

AN ACT to regulate the business of check cashing and repealing P.L.1951, c.187 (C.17:15A-1 et seq.).

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

C.17:15A-30 Short title.

1. This act shall be known and may be cited as "The Check Cashers Regulatory Act of 1993."

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.

"Check" includes a check, draft, money order, negotiable order of withdrawal and similar types of negotiable instruments.

"Commissioner" means the Commissioner of Banking.

"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.

"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.

"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.

“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.

C.17:15A-32 License required.

3. No person shall cash a check for a fee unless that person has a license. The license shall not be transferable or assignable.

C.17:15A-33 Application for licensure; requirements.

4. Any person wishing to be licensed to cash checks for a fee shall:

a. Submit to the commissioner a completed written application on forms prescribed by the commissioner which shall contain notice that false statements made therein are punishable and supported by evidence as required by the commissioner;

b. Submit an application fee as prescribed by the commissioner by regulation in an amount not to exceed \$2,000;

c. Submit proof of net worth and liquid assets as required pursuant to section 8 of this act; and

d. Execute a statement on the application in which the applicant consents to allow the department to examine the records of the bank account or accounts used for its check cashing business.

C.17:15A-34 Approval of application.

5. The commissioner shall approve an application for a license if:

a. The applicant has complied with the requirements of section 4 of this act;

b. The commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant support the belief that the business will be operated honestly and fairly; and

c. The commissioner finds that none of the grounds for revoking or suspending a license set forth in section 19 of this act exist.

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; and

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 this section.

C.17:15A-36 Fingerprinting, background checks for licensees.

7. Each director, substantial stockholder, officer, owner, partner, manager, and employee in the check cashing business of a licensee shall submit to being fingerprinted on forms supplied by the commissioner and shall provide written consent to the performance of background checks. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation and the Division of State Police for use in performing background checks. The commissioner is authorized to conduct such additional background checks as he deems appropriate. The department is authorized to collect from the applicant or licensee any costs connected with these background investigations.

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 or mobile office, capital or net worth of at least \$50,000, and has available for the operation of its check cashing business at each office or mobile office, liquid assets of at least \$50,000.

C.17:15A-38 Licensee to engage services of public accountant.

9. a. Each applicant shall engage and each licensee shall maintain the services of a public accountant, which accountant shall assist the licensee to maintain the records of the check cashing business in an orderly and accurate manner.

b. The contract between the licensee and the public accountant shall include a statement by the accountant consenting to allow

the department to examine all records of the licensee at the accountant's place of business during normal business hours.

c. If a licensee changes the public accountant used to assist in the maintenance of the licensee's records of the check cashing business, the licensee shall notify the department within 15 days of the date a change is made and provide the department with the information required pursuant to subsection d. of section 10 of this act.

C.17:15A-39 License required for operation, conditions.

10. No applicant for a license shall commence operations until a license has been issued. The commissioner shall not issue a license unless the following conditions have been met:

a. The application for the license has been approved pursuant to section 5 of this act;

b. The applicant's place or places of business have been approved by the department and the department has determined that the applicant has the necessary equipment to record transactions and maintain other records as required by this act;

c. The applicant has submitted to the department a statement that the applicant has a bank account or accounts which will be used solely for the check cashing business, together with the number or numbers of those accounts and the name of the institution in which each account is held; and

d. The applicant has submitted to the department the name and business address of the applicant's public accountant and evidence acceptable to the commissioner demonstrating compliance with subsections a. and b. of section 9 of this act.

C.17:15A-40 License validity; fee.

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.

C.17:15A-41 Maintenance of offices by licensee; requirements.

12. a. Except as provided in subsections b., c. and d. of this section, a licensee shall have and maintain a single office at one address in the State for the transaction of business. No licensee

shall change the address of an existing office without prior written approval from the commissioner.

b. The commissioner shall authorize a licensee, pursuant to an application approved by the commissioner, to establish and operate a full branch office or offices at which may be conducted all of the business which may be conducted at the principal office if:

(1) the licensee provides the name of the person who will manage the full branch office;

(2) the licensee has paid a full branch application fee, as specified by regulation;

(3) the licensee has submitted proof, as required pursuant to section 8 of this act, that there is sufficient net worth and liquid assets for the operation of a full branch office;

(4) the site of the full branch office has been approved by the commissioner and the commissioner has determined that the applicant or licensee has the necessary equipment to record transactions and maintain other records as required by this act; and

(5) the licensee or applicant has met any additional conditions which the commissioner may require in the public interest.

c. The commissioner shall authorize a licensee, pursuant to an application approved by the commissioner, to operate a limited branch office or offices, the business of which shall be limited to cashing checks for a particular group or groups at one or more private premises, provided that the holder of a limited branch authorization observes all of the rules and regulations issued by the commissioner applicable to all licensees except that:

(1) the books and records required to be kept may be kept at the principal office of the licensee; and

(2) the requirements of section 8 of this act concerning capital and net worth shall not apply with respect to a limited branch office if the licensee is in compliance with section 8 of this act with respect to its principal office.

d. The commissioner shall authorize a licensee, pursuant to an application approved by the commissioner, to operate a mobile office, the business of which shall be conducted from a suitable motor vehicle or similar mobile device, at a designated geographic location or locations specified to the commissioner in its application and for the purpose of serving the public in that specific location or locations if the commissioner finds that:

(1) an applicant for a mobile office has met the requirements of paragraphs (1) through (3) and (5) of subsection b. of this section;

(2) the mobile office facility has been approved by the commissioner and the commissioner has determined that the applicant has the necessary equipment to record transactions and maintain other records as required by this act;

(3) the commissioner has approved the one or more geographic locations and the days and hours of operation at each geographic location at which the check cashing services of the mobile unit are to be made available to the public for the cashing of checks, drafts or money orders;

(4) the place where the books, records, and all information pertaining to its business are to be kept and made available to representatives of the department has been specified, which location shall not be changed without first advising the department in writing of the new location where those books, records and information shall be kept;

(5) a licensee's application for multiple geographic locations for operating a mobile unit is in the public interest; and

(6) the holder of a license to operate a mobile unit is in compliance with the provisions of Title 39 of the Revised Statutes and the ordinances and traffic regulations issued by municipal and other authorities. If a municipality requires a special permit or license fee for the purpose of operating a mobile unit, the applicant or licensee shall obtain that permit or license as a condition for the issuance of the authority to operate a mobile unit pursuant to this section.

e. No office or mobile office shall be located within 2,500 feet of an existing office or mobile office, that distance being measured as the radius of a circle with the entrance to the existing office or mobile office considered the center point from which the radius is measured.

C.17:15A-42 Approval required for sale, transfer of business.

13. Any sale or transfer of a controlling interest in a licensee's or applicant's check cashing business shall be approved by the commissioner prior to the transfer or sale, after the licensee or applicant has provided written notice of the proposed sale or transfer to the commissioner. The commissioner shall approve the transfer or sale unless he determines, following an opportunity for a hearing, that sufficient grounds exist to deny, revoke, or suspend the license.

C.17:15A-43 Fees permitted.

14. No licensee shall charge a fee or receive any other consideration, directly or indirectly, which is greater than the amount permitted pursuant to this section, as follows:

a. For cashing a check drawn on a depository institution or other financial entity located in this or any other State, two percent of the face amount of the check, or \$.90, whichever is greater;

b. For cashing a check payable to a recipient of aid to families with dependent children (AFDC), one percent of the face amount of the check, or \$.90, whichever is greater.

c. For cashing a check payable to a recipient of supplemental security income pursuant to Subchapter XVI of the Social Security Act, 42 U.S.C. §1381 et seq., one and one half percent of the face amount of the check, or \$.90, whichever is greater;

d. On or after the 365th day from the effective date of this act, subsequent increases to the fees which may be charged pursuant to subsection a. of this section by a licensee for cashing a check, draft or money order shall be set by the commissioner by regulation.

e. In setting the fees pursuant to subsection d. of this section, the commissioner shall consider, but not be limited to, the following:

- (1) rates charged in the past;
- (2) the income, cost and expense of the operation of licensees;
- (3) rates charged by licensed check cashers or other similar entities located in other states for the same or similar services and the factors upon which those rates are based;
- (4) changes in the population served; and
- (5) a reasonable profit for check cashers.

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 the 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 and mobile office, 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 and mobile office.

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;

(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 taxpayer 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; and

(h) the amount of the fee charged.

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. §5311 et seq. and 31 C.F.R. §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.

C.17:15A-45 Annual report.

16. Each licensee shall annually, on or before March 1, file a report with the commissioner giving the information the commissioner may require concerning its check cashing business and operations during the preceding calendar year. In addition to the annual report the commissioner may require additional regular or special reports as the commissioner deems necessary to effectuate the purposes of this act. These reports shall be made under oath or affirmation and shall be in the form prescribed by the commissioner.

C.17:15A-46 Right to examine books, records.

17. The department shall have the right to examine the books and records, and the place or places of business of any licensee. The reasonable cost of the examination shall be borne by the licensee. The department may order that the books and records be made available, and that the examination take place, at the office of the licensee's public accountant.

C.17:15A-47 Prohibitions for licensees.

18. No licensee, or any person acting on behalf of a licensee, shall:

a. Cash a check which is made payable to a payee which is other than a natural person unless the licensee has on file a corporate resolution or other appropriate documentation indicating that the corporation, partnership or other entity has authorized the presentation of a check on its behalf and the federal taxpayer identification number of the corporation, partnership or other entity;

b. Cash a check for anyone other than the payee named on the face of the check, except that the commissioner may, by regulation, establish exceptions to this prohibition;

c. Cash or advance any money on a postdated check;

d. Fail to give each customer at the end of each transaction a receipt showing the amount of the check which was cashed, the

amount which was charged for cashing the check, and the amount of cash which the customer was given;

e. Engage in the business of making loans of money, credit, goods or things or discounting or buying of notes, bills of exchange, checks or other evidences of debt, or conduct, or allow to be conducted, a loan business or the negotiation of loans or the discounting or buying of notes, bills of exchange, checks or other evidences of debt in the same premises where the licensee is cashing checks. For purposes of this subsection, a licensee shall be deemed to have made a loan if the licensee cashes a check deposited by a customer whose check cashing privileges were required to be suspended under subsection j. of section 15 of this act. Notwithstanding the provisions of this subsection, any person licensed as a pawnbroker in this State shall be eligible to qualify as a licensee under this act, and upon being so licensed, may conduct business as a check casher in the same premises in which that person conducts business as a pawnbroker;

f. Engage in business at an office or mobile office other than a business which primarily provides financial services, except as otherwise provided pursuant to subsection e. of this section;

g. Violate any provision of this act or regulations promulgated pursuant to this act; or

h. Fail to comply with any order of the commissioner.

C.17:15A-48 Revocation, suspension of license.

19. a. The commissioner may revoke or suspend a license if, after notice and hearing, the commissioner determines that the licensee:

(1) Has violated any provision of this act or any order, rule, or regulation made or issued pursuant to this act or has violated any other law in connection with the operation of the check cashing business;

(2) Has failed to pay any fee, penalty, or other lawful levy imposed by the commissioner;

(3) Has withheld information or made a material misstatement in the application for the license, or in any branch application or in any other submission to the department;

(4) Has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or has had a final judgment entered against him in a civil action upon grounds of fraud, misrepresentation or deceit;

(5) Is associating with, or has associated with, any person who has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or who has had a

final judgment entered against him in a civil action upon grounds of fraud, misrepresentation or deceit;

(6) Has become insolvent or has acted in a way that indicates the licensee's check cashing business would not be operated in a financially responsible manner;

(7) Has demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise; or

(8) Has engaged in any other conduct which would be deemed by the commissioner to be grounds to deny, revoke or suspend a license.

b. Pending an investigation or a hearing for the suspension or revocation of any license issued pursuant to this act, the commissioner may temporarily suspend such license for a period not to exceed 90 days, if the commissioner finds that such suspension is in the public interest.

C.17:15A-49 Violations, penalties.

20. a. Any person who cashes a check for consideration without having first obtained a license as required by section 3 of this act shall be liable for a penalty of not more than \$1,000 for each violation. For the purposes of this section, each check cashed for consideration without a license shall constitute a separate violation.

b. Any person who violates or causes to be violated any provision of this act or any order, rule or regulation made or issued pursuant to this act shall be liable for a penalty, in addition to all other penalties or forfeitures imposed by this or any other law, of not more than \$5,000 for each violation. Any person who shall aid or abet a violation shall be equally liable for such a penalty as may be imposed upon a principal violator. For the purpose of this subsection, a violation of any provision of this act or any order of the commissioner or rule or regulation promulgated by the commissioner pursuant thereto shall constitute a separate violation.

c. The commissioner may issue an order to any licensee who violates any provision of this act or regulation promulgated thereunder, ordering payment of the penalties provided in this act and corrective action concerning the violation. Any person aggrieved by any ruling, action, order, or notice of the commissioner shall be entitled to a hearing. The application for such a hearing shall be filed in writing with the commissioner within 15 days of receipt thereof.

d. Where any violation of any provision of this act is of a continuing nature, each day during which the violation remains uncorrected after the date fixed by the commissioner in any order or notice for the correction or termination of such continuing vio-

lation shall constitute a separate and distinct violation, except during the time when an appeal from such an order is being taken.

e. The commissioner is hereby authorized and empowered to compromise and settle any claim for a penalty under this section for an amount that appears appropriate and equitable under the circumstances.

f. The civil penalties provided for in this section, if not paid to the commissioner within 30 days of their issuance, shall be collected in a civil action brought in the name of the commissioner pursuant to the provisions of "the penalty enforcement law," N.J.S.2A:58-1 et seq.

g. Penalties imposed pursuant to this act shall not diminish the remedies which may be available to complainants through private actions.

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.

C.17:15A-51 Waivers unenforceable, void.

22. Any agreement to waive any requirement contained in this act shall be unenforceable and void.

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.

Repealer.

24. P.L.1951, c.187 (C.17:15A-1 et seq.) is repealed.

25. This act shall take effect on the 90th day following enactment, except section 23 shall take effect immediately.

Approved January 11, 1994.

CHAPTER 384

AN ACT concerning withdrawal from sending-receiving relationships and supplementing chapter 38 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:38-21.1 Termination of sending-receiving relationship.

1. a. Notwithstanding the provisions of N.J.S.18A:38-13 and N.J.S.18A:38-21, any board of education which sends students to another school district may terminate a sending-receiving relationship pursuant to the following conditions:

(1) The resident enrollment of the receiving district shall represent more than 95% of the total student enrollment attending the receiving district and the number of students from the sending district who attend the receiving district shall represent less than three percent of the total student enrollment attending the receiving district. Enrollments shall be determined using resident enrollment figures compiled in October of the preceding school year;

(2) The sending district shall agree to join a regional school district subsequent to the termination of its sending-receiving relationship;

(3) Any secondary school student in the sending district at the time of termination of the sending-receiving relationship shall be permitted to complete his secondary education within the receiving district. The sending-receiving relationship shall be continued for these students;

(4) The termination will not significantly disrupt the racial composition of the sending and receiving school districts; and

(5) A petition of the sending district to terminate the sending-receiving relationship has not been denied since January 1, 1988 by the Commissioner of Education, the State Board of Education, or the New Jersey courts for reasons which include the impact on the racial composition of the pupil population of the districts.

b. Any school district which meets the conditions of subsection a. of this section must take final action to terminate its sending-receiving relationship within three years following the effective date of this act.

c. Any school district which has taken final action to terminate its sending-receiving relationship pursuant to this section shall notify the receiving school district no later than December 1 of the school year prior to the school year in which the termination is to occur. Termination of the sending-receiving relationship shall not occur until the sending district has been admitted to an existing regional school district pursuant to N.J.S.18A:13-43 and N.J.S.18A:13-44, or has become part of a newly formed all purpose regional district pursuant to N.J.S.18A:13-34 and N.J.S.18A:13-35.

2. This act shall take effect immediately.

Approved January 11, 1994.

CHAPTER 385

AN ACT concerning the alternate benefit program, amending and supplementing P.L.1969, c.242 and amending P.L.1986, c.188.

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

1. Section 2 of P.L.1969, c.242 (C.18A:66-168) is amended to read as follows:

C.18A:66-168 Repeal subject to certain provisos.

2. Repeal of the act and parts of acts, and all amendments and supplements thereto, pursuant to section 1 of this act, is subject to the following provisos:

a. The alternate benefit programs established by the Board of Trustees of the University of Medicine and Dentistry, the Board of Governors of Rutgers, The State University of New Jersey, the Board of Trustees of the New Jersey Institute of Technology and the Board of Higher Education for certain employees of State and county colleges, are continued except as the benefit and contribution schedules are revised by this act.

b. The timely filing of applications for transfer from the Public Employees' Retirement System, the Teachers' Pension and Annuity Fund and the Group Annuity Plan as specified in such acts shall be deemed to have not been revised by this act.

c. The transfer of employee and employer contributions from the Public Employees' Retirement System, the Teachers' Pension and Annuity Fund and the Group Annuity Plan to the insurers or mutual fund companies of the alternate benefit programs shall be considered as having met the requirements of said acts and shall be continued as provided by this act.

d. Any contributions made by a member of the alternate benefit program for any additional death benefit coverage established under said acts shall not be returnable to the member or his beneficiary in any manner, or for any reason whatsoever, nor shall any contributions made for the additional death benefit coverage be included in any annuity payable to any such member or to his beneficiary.

2. Section 3 of P.L.1969, c.242 (C.18A:66-169) is amended to read as follows:

C.18A:66-169 Definitions.

3. As used in this act:

a. "Accumulated deductions" means those contributions as defined in N.J.S.18A:66-2 or in section 6 of P.L.1954, c.84 (C.43:15A-6).

b. "Base salary" means a participant's regular base or contractual salary. It shall exclude bonus, overtime or other forms of extra compensation such as (1) longevity lump sum payments, (2) lump sum terminal sick leave or vacation pay, (3) the value of maintenance, (4) individual pay adjustments made within or at the conclusion of the participant's final year of service, (5) retroactive salary adjustments or other pay adjustments made in the participant's final year of service unless such adjustment was made as a result of a general pay adjustment for all personnel of the department or institution, (6) any unscheduled individual adjustment made in the final year to place the member at the max-

imum salary level within his salary range and (7) any pay for services rendered during the summer vacation period by a participant who is required to work only 10 months of the year.

c. "Base annual salary" means the base salary upon which contributions by the member and his employer to the alternate benefit program were based during the last year of creditable service.

d. "Board of Higher Education" means the board described in article 2 of chapter 3 of Title 18A of the New Jersey Statutes and the agency responsible for the establishment of the alternate benefits program of the State and County Colleges.

e. "University of Medicine and Dentistry" means the University of Medicine and Dentistry of New Jersey established pursuant to the terms of section 3 of P.L.1970, c.102 (C.18A:64G-3).

f. "County colleges" means the colleges so defined in N.J.S.18A:64A-1.

g. "Division of Pensions and Benefits" means the division established in the Department of the Treasury pursuant to section 1 of P.L.1955, c.70 (C.52:18A-95) and is the agency responsible for the administration of the alternate benefit program of the Department of Higher Education, the State and county colleges and for the administration of the group life and disability insurances of all alternate benefit programs established in the State for public employees.

h. "Full-time officers" and "full-time members of the faculty" shall include the president, vice president, secretary and treasurer of the respective school. Also included are employees of the Department of Higher Education whose positions are so designated by the Board of Higher Education. All other employees of the Department of Higher Education shall, if otherwise eligible, be enrolled in the Public Employees' Retirement System or transferred from the Teachers' Pension and Annuity Fund to said system. "Full-time" shall also include eligible full-time officers and full-time members of the faculty who are granted sabbaticals or leaves of absence with pay where the compensation paid is 50% or more of the base salary at the time the leave commences and the period of eligibility terminates with the end of the school year following the year in which the sabbatical began. "Part-time" shall be defined as an appointment where the employee receives a salary or wages for a period of less than 50% of the normal work week. These definitions shall apply to teaching or administrative staff members or to employees serving in a dual capacity where the appointment includes teaching as well as administrative duties.

i. "Group Annuity Plan" refers to the Group Annuity Contract R-134 between the Board of Trustees of the New Jersey Institute of Technology and the Prudential Insurance Company of America.

j. "Member" or "participant" means a full-time officer or a full-time member of the faculty participating in the alternate benefit program.

k. "New Jersey Institute of Technology" means the Newark College of Engineering.

l. "Pension reserve" means those moneys as defined in N.J.S.18A:66-2 or in section 6 of P.L.1954, c.84 (C.43:15A-6).

m. "Rutgers, The State University" means the institution of higher education described in chapter 65 of Title 18A of the New Jersey Statutes.

n. "State Colleges" means the colleges so described in chapter 64 of Title 18A of the New Jersey Statutes.

o. "Mutual fund company" means an investment company or trust regulated by the federal "Investment Company Act of 1940," 15 U.S.C. §§80a-1 et seq.

C.18A:66-172.1 Pension Provider Selection Board.

3. There is established in but not of the Division of Pensions and Benefits in the Department of the Treasury the Pension Provider Selection Board, which shall consist of the Director of the Division of Pensions and Benefits or a representative of that director; the Director of the Division of Investment or a representative of that director; the Commissioner of the Department of Insurance or a representative of that commissioner; the Director of the Division of Purchase and Property or a representative of that director; the Chancellor of Higher Education; and a person appointed by the Chancellor of Higher Education who is an active participant or receiving a benefit from the alternate benefit program.

The Pension Provider Selection Board shall select through a competitive bidding process at least three unrelated insurance or mutual fund companies licensed or otherwise authorized to transact business in New Jersey from which alternate benefit contracts will be purchased. These new insurers or mutual fund companies shall be selected by competitive bidding in accordance with all applicable State laws and regulations not later than the 270th day following the effective date of P.L.1993, c.385 (C.18A:66-172.1 et al.). The selected carriers shall be authorized to receive contributions within 60 days of their selection. Each contract shall be awarded for a period not to exceed six years with a renewal option for a period not to exceed three years. All carriers shall be subject

to a performance review by the Pension Provider Selection Board every seven years and must meet such standards as the Pension Provider Selection Board shall establish by regulation in order to be renewed for another term of seven years as carriers. Removal of a carrier for cause during a seven-year term is not waived. In establishing by regulation the criteria for the initial selection and any performance review of a carrier, the Pension Provider Selection Board shall consider, among other things, the following:

- a. the portability of the contracts offered or to be offered by the company, based on the number of states in which the company provides contracts under similar plans;
- b. the efficacy of the contracts in the recruitment and retention of employees for the various State public institutions of higher education;
- c. the nature and extent of the rights and benefits to be provided by the contracts for participating employees and their beneficiaries;
- d. the relation of the rights and benefits to the amount of contributions to be made pursuant to the provisions of this article;
- e. the suitability of the rights and benefits to the needs and interests of participating employees and the various State public institutions of higher education;
- f. the ability of the company to provide the rights and benefits under such contracts;
- g. the financial soundness of the company, the extent of the company's financial commitment to the contracts, and whether the company meets the minimum financial criteria established by the Division of Pensions and Benefits and the Board of Higher Education;
- h. the company's overall quality of service, its investment performance considering return on investments and risk, the administrative fee to be charged to participating employees, and the offering of a balanced array of investment opportunities; and
- i. the nature of the informational or promotional materials to be provided to prospective participants.

The Pension Provider Selection Board may not designate a company which serves as a disbursement system for other providers or which charges third party administrative fees.

A company that has been designated as of January 1, 1993 by the Division of Pensions and Benefits as a designated provider shall continue to be so designated until its status as a designated provider is terminated for cause by the division or by the Pension Provider Selection Board.

4. Section 6 of P.L.1969, c.242 (C.18A:66-172) is amended to read as follows:

C.18A:66-172 Allocation of contributions; mobility of pension credit.

6. Participants in the alternate benefit program shall be allowed to allocate portions of their own contributions and the contributions of their employer, including amounts used by the employer to purchase an annuity pursuant to a salary reduction agreement under section 24 of P.L.1969, c.242 (C.18A:66-190), to accounts with two or more insurers or mutual fund companies designated pursuant to the provisions of section 3 of P.L.1993, c.385 (C.18A:66-172.1) as companies from which alternate benefit contracts may be purchased, and shall, subject to such rules and regulations as the Division of Pensions and Benefits may adopt, be permitted to direct the withdrawal of such contributions from their account with one such company for deposit in an account with another such company. Since the establishment of the alternate benefit programs for the several public institutions of higher education in New Jersey is designed to provide mobility of pension credit from within the academic community in and outside the State, and since it is imperative that eligibility for participation in this program be of uniform application in the several schools, it shall be the responsibility of the Board of Higher Education to establish regulations which shall provide for such uniformity.

5. Section 7 of P.L.1969, c.242 (C.18A:66-173) is amended to read as follows:

C.18A:66-173 Transfer of certain accumulated deductions to alternate benefit program; transfer of pension reserves; determination of pension; employee's option; limitation.

7. (a) When a member of the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System or the Police and Firemen's Retirement System elects to transfer to an alternate benefit program by filing the proper application form declaring his election to participate in such alternate benefit program, the respective retirement system shall transfer the amount of his accumulated deductions as of the date of transfer to his individual account in the program.

(b) There shall also be transferred from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System or the Police and Firemen's Retirement System or from the Group Annuity Plan

to the individual's account in the alternate benefit program, the pension reserve required as of the date of his transfer to provide a pension for each year of service credited to the account of the member as set forth in N.J.S.18A:66-36 or N.J.S.18A:66-44 or as set forth in section 38 or section 48 of P.L.1954, c.84 as such sections have been amended and supplemented as of July 1, 1969 (C.43:15A-38, C.43:15A-48) or as set forth in section 17 of P.L.1964, c.241 (C.43:16A-11.2) or section 5 of P.L.1944, c.255 (C.43:16A-5) or for each year of service credited under the Group Annuity Plan. Such transfer from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System or the Police and Firemen's Retirement System or the Group Annuity Plan shall be made at the time of the member's transfer to the alternate benefit program in the case of any such member who has then met the eligibility requirements for a pension under the aforementioned N.J.S.18A:66-36, or N.J.S.18A:66-44, or section 38 or section 48 of P.L.1954, c.84 (C.43:15A-38, C.43:15A-48) or section 17 of P.L.1964, c.241 (C.43:16A-11.2) or section 5 of P.L.1944, c.255 (C.43:16A-5) or the Group Annuity Plan. In the case of any member who elects to participate in the alternate benefit program who has not then met the eligibility requirements for a pension under N.J.S.18A:66-36 or N.J.S.18A:66-44, or under section 38 or section 48 of P.L.1954, c.84 (C.43:15A-38, C.43:15A-48) or section 17 of P.L.1964, c.241 (C.43:16A-11.2) or section 5 of P.L.1944, c.255 (C.43:16A-5) or under the Group Annuity Plan, the transfer from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System or the Police and Firemen's Retirement System or the Group Annuity Plan shall be effected at the time such requirements have been met, taking into account for the purpose of such eligibility requirement his years of membership service at the time of his election and his subsequent years of service as a full-time member of the faculty of the University of Medicine and Dentistry, Rutgers, The State University, the New Jersey Institute of Technology or the State or county colleges or as an eligible employee of the Department of Higher Education, or at the time he shall have 10 years of credit for New Jersey service and becomes physically incapacitated for the performance of duty if he had been a member of the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System or the Police and Firemen's Retirement System as of the date of transfer.

The annuity to be used in determining the amount of pension is the actuarial equivalent of the member's accumulated deductions

transferred from the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System or the Police and Firemen's Retirement System to the date the member attains 60 years of age, if subsequent to the date of election. The amount of pension is that established by formula within N.J.S.18A:66-44 or section 48 of P.L.1954, c.84 as such sections have been amended and supplemented as of July 1, 1969 (C.43:15A-48) or section 5 of P.L.1944, c.255 (C.43:16A-5) or under the Group Annuity Plan, and changes to N.J.S.18A:66-44 or section 48 of P.L.1954, c.84 (C.43:15A-48) or section 5 of P.L.1944, c.255 (C.43:16A-5) enacted subsequent to this act or the Group Annuity Plan shall have no application to the provisions of this act.

In the event that the eligibility requirement under N.J.S.18A:66-36 or under section 38 of P.L.1954, c.84 (C.43:15A-38) or section 17 of P.L.1964, c.241 (C.43:16A-11.2) or under the Group Annuity Plan is changed at some future date to permit members to become eligible for such benefit prior to the completion of 15 years of service, the transfer of the reserve from the contingent reserve fund or the pension fund of the Teachers' Pension and Annuity Fund or the Public Employees' Retirement System or the Police and Firemen's Retirement System or from the Group Annuity Plan shall be effective as of the date the member who had elected the alternate benefit program meets the amended eligibility requirement or the effective date of the amendment, whichever is later.

In the event an option is available with respect to the distribution of employee and employer contributions between fixed and variable annuities under the alternate benefit program, the employee shall have the right to determine the percentage distribution of these funds subject to any limitations imposed by the designated insurer or insurers.

(c) No transfer of pension reserves shall be made pursuant to this section where more than two consecutive years elapse in which no employer contributions to an alternate benefit program are required.

6. Section 8 of P.L.1969, c.242 (C.18A:66-174) is amended to read as follows:

C.18A:66-174 Reductions from compensation of participants; payments of employer contributions.

8. (a) The University of Medicine and Dentistry of New Jersey, Rutgers, The State University and the New Jersey Institute of Technology shall reduce the compensation of each participant in

the alternate benefit program and pay over to the insurers or mutual fund companies for the benefit of the participant an employee contribution for the retirement annuity contract or contracts equal to 5% of the participant's base salary. The intervals for deductions or reductions and payments shall be determined by the respective school governing bodies.

The Division of Pensions and Benefits shall provide for reductions from the compensation of each participant in the alternate benefit program employed by the Department of Higher Education, the State and county colleges of an employee contribution equal to 5% of the participant's base salary and pay this amount to the insurers or mutual fund companies for the individual's retirement annuity contract or contracts. The intervals for deductions or reductions and payments shall be determined by the Division of Pensions and Benefits.

The Division of Pensions and Benefits may require that all participant contributions be made in accordance with section 414(h) of the federal Internal Revenue Code (26 U.S.C. §414(h)).

(b) Based on a certification to the Division of Pensions and Benefits by the University of Medicine and Dentistry of New Jersey, Rutgers, The State University and the New Jersey Institute of Technology of the number and base salary of participants, the division shall authorize the State to make payment of the employer contributions to the alternate benefit program at a rate equal to 8% of the employee's base salary, which moneys shall be paid to the designated insurers or mutual fund companies for the benefit of each participant.

Based on a certification by the Division of Pensions and Benefits of the number and base salary of participants employed by the Department of Higher Education, the State and county colleges, the State shall make payment of the employer contributions to the alternate benefit program at a rate equal to 8% of the employee's base salary, which moneys shall be paid to the designated insurers or mutual fund companies for the benefit of each participant.

(c) For the member of the Public Employees' Retirement System employed by the county colleges, who is defined in the regulations of the Board of Higher Education as a full-time faculty member and who is permitted to transfer his membership and does so, the State shall pay the employer contribution to the alternate benefit program at a rate equal to 8% of the member's base salary. If the member continues membership in the Public Employees' Retirement System, the State shall pay the employer

contribution to the retirement system on his behalf and such employer contribution shall be at a rate equal to the normal contribution made by the State on behalf of nonveteran members of the Public Employees' Retirement System.

(d) For any nonacademic employee of a county college, as defined in section 4 of P.L.1969, c.242 (C.18A:66-170), who is eligible for the program according to the regulations of the Board of Higher Education, the county college shall pay the employer contribution to the retirement system on the employee's behalf in the same manner as the State, pursuant to this section.

7. Section 9 of P.L.1969, c.242 (C.18A:66-175) is amended to read as follows:

C.18A:66-175 Termination of membership or participation.

9. Membership or participation in the alternate benefit program shall terminate and the individual shall be considered retired once he has elected to receive a cash distribution upon separation from service or an annuity option from the designated insurer or insurers or a designated mutual fund company or companies, as appropriate.

8. Section 21 of P.L.1969, c.242 (C.18A:66-187) is amended to read as follows:

C.18A:66-187 Certain employer obligations prohibited.

21. While any participant in the alternate benefit program may make personal contributions at any time directly to the insurers or mutual fund companies of the individual retirement annuities, no employer obligations will be paid when the participant is on a leave of absence without pay or when the participant no longer meets the definition of a full-time officer or full-time member of the faculty.

9. Section 22 of P.L.1969, c.242 (C.18A:66-188) is amended to read as follows:

C.18A:66-188 Cash surrender option; policy loans; conditions for annuity repurchase; effect on past and future contributions.

22. The alternate benefit programs shall provide an option for cash surrender upon separation from service. The cash surrender shall be applicable only to employee contributions and accumulations prior to the participant's 55th birthday, and thereafter to the full amount of all employee and employer contributions and accumulations. Additionally, a participant may borrow from his

employee account accumulations up to the amounts allowed under federal law while still employed. Employee and employer account accumulations shall be used to qualify for the amount of a policy loan. In the event a participant in the alternate benefit program terminates his employment for reasons other than retirement or disability and requests repurchase of his annuity or annuities, such repurchase shall be allowed provided it meets the conditions under which the insurer or mutual fund company will repurchase annuities automatically, and provided that the portion of the repurchase value attributable to employer contributions made pursuant to this act shall be refunded to the employer.

The amendments to this section made by P.L.1993, c.385 (C.18A:66-172.1 et al.) shall apply to all contributions made to a plan under the alternate benefit program on or after the 90th day following the effective date of that P.L.1993, c.385. Any plan contributions invested in the College Retirement Equities Fund prior to that date shall be fully subject to distribution as cash if those contributions shall not have been annuitized prior to that 90th day. Any plan contributions invested in the Teachers Insurance and Annuity Association prior to that 90th day shall become subject to distribution as cash to the maximum extent permitted by the contract if those contributions shall not have been annuitized prior to that 90th day.

10. Section 23 of P.L.1969, c.242 (C.18A:66-189) is amended to read as follows:

C.18A:66-189 Vesting of contributions; qualification under federal tax law.

23. The Division of Pensions and Benefits may, in its sole discretion, qualify the alternate benefit program under section 401(a) or 403(a) of the federal Internal Revenue Code (26 U.S.C. §401(a), §403(a)). In such a case, all contributions to the retirement annuity contracts shall be made as soon as the employee is eligible and has filed application forms required by the annuity carrier. No employer contributions under these contracts shall be vested in the employee until after the employee commences the second year of employment unless the employee, at the time of initial employment, either (a) owns a retirement annuity contract or contracts determined by the Division of Pensions and Benefits to be substantially similar to the contracts to be purchased under the alternate benefit program and issued by the designated insurer.

ers or mutual fund companies, or (b) is a member of another State-administered retirement system.

To the extent that any contributions required by this section would exceed the limits established pursuant to section 415 of the Internal Revenue Code, the contributions shall not be made to a plan which has been qualified under sections 401(a) or 403(a) of the Internal Revenue Code. Instead, the excess contributions shall be made to a section 403(b) plan established by the State to the extent that those contributions would be permitted to the plan in compliance with any provisions of the Internal Revenue Code and, in the event that there are remaining contributions, they shall be made to a nonqualified annuity plan established and maintained for this purpose. The participant shall be liable for any federal income taxes on contributions made to this plan.

11. Section 25 of P.L.1969, c.242 (C.18A:66-191) is amended to read as follows:

C.18A:66-191 Prohibited payments; authorized payments.

25. No retirement, death or other benefit shall be payable by the State, the University of Medicine and Dentistry, Rutgers, The State University, the New Jersey Institute of Technology, the Board or the Department of Higher Education or the Division of Pensions and Benefits under the alternate benefit program. Benefits shall be payable to participating employees and their beneficiaries only by the designated insurers or mutual fund companies under the terms of the contracts.

12. Section 1 of P.L.1986, c.188 (C.43:3C-9) is amended to read as follows:

C.43:3C-9 Employer pickup of employee contributions.

1. The mandatory contributions by members to the Teachers' Pension and Annuity Fund required by N.J.S.18A:66-31, to alternate benefit providers under the alternate benefit program required by section 8 of P.L.1969, c.242 (C.18A:66-174), to the Judicial Retirement System required by section 26 of P.L.1981, c.470 (C.43:6A-34.1), to the Prison Officers' Pension Fund required by section 7 of P.L.1941, c.220 (C.43:7-13), to the Public Employees' Retirement System required by section 25 of P.L.1954, c.84 (C.43:15A-25), to the Consolidated Police and Firemen's Pension Fund required by R.S.43:16-5, to the Police and Firemen's Retirement System required by section 15 of

P.L.1944, c.255 (C.43:16A-15), and to the State Police Retirement System required by section 38 of P.L.1965, c.89 (C.53:5A-38), shall be picked up by their employers and shall be treated as employer contributions as provided by section 414(h) of the United States Internal Revenue Code. The amount of contributions on behalf of each member shall continue to be included as regular compensation for all other purposes, except that the amount shall not be included in the computation of federal income taxes withheld from the member's compensation.

13. This act shall take effect immediately.

Approved January 11, 1994.

CHAPTER 386

AN ACT appropriating \$28,000,000 from the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, 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 to the Department of Environmental Protection from the "1992 New Jersey Green Acres Fund," established pursuant to section 21 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, the sum of \$28,000,000 for the acquisition of lands by the State for recreation and conservation purposes. This sum shall include administrative costs and shall be allocated as follows:

<u>Project</u>	<u>County</u>	<u>Estimated Cost</u>
Additions	Statewide	\$ 750,000
Bear Swamp WMA	Sussex	\$1,500,000
Cooperative Projects	Statewide	\$2,000,000
Delaware Bay Greenway	Various	\$2,750,000
D & R Canal Greenway	Various	\$ 250,000
Delaware River Greenway	Various	\$ 500,000
Historic Resource Areas	Statewide	\$ 250,000
Jenny Jump State Forest	Warren	\$2,000,000
Musconetcong River Greenway	Various	\$1,000,000
Natural Areas/ Critical Resources	Statewide	\$1,500,000

<u>Project</u>	<u>County</u>	<u>Estimated Cost</u>
Nonprofit Camps	Statewide	\$1,500,000
Morvin Green/ Long Pond Connector	Passaic	\$ 500,000
Pequest Greenway	Warren	\$1,000,000
Pinelands	Various	\$2,000,000
Recreational Trails	Statewide	\$ 750,000
Swartwood State Park	Sussex	\$ 500,000
Urban Parks	Statewide	\$3,000,000
Water Access Sites	Statewide	\$2,000,000
Watershed Lands	Statewide	\$4,000,000
Technical	Statewide	\$ 250,000

b. Any transfer of any funds listed in this section, section 1 of P.L.1993, c.217, section 1 of P.L.1991, c.13, or section 1 of P.L.1991, c.522, shall require the approval of the Joint Budget Oversight Committee or its successor.

c. There is reappropriated to the Department of Environmental Protection the unexpended balances of the amounts appropriated for State projects pursuant to section 1 of P.L.1991, c.13, and section 1 of P.L.1991, c.522, from the "1989 New Jersey Green Acres Fund," established pursuant to section 18 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, for the State projects listed in this section, section 1 of P.L.1993, c.217, section 1 of P.L.1991, c.13, and section 1 of P.L.1991, c.522, for the acquisition and development of lands by the State for recreation and conservation purposes and for the purpose of administrative costs associated with any such projects, to the extent such funds are available as a result of project cancellations or cost savings.

d. There is appropriated to the Department of Environmental Protection such sums as may be or become available on or before June 30, 1994, due to interest earnings in the "1992 New Jersey Green Acres Fund" established pursuant to section 21 of the "Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992," P.L.1992, c.88, and in the "1989 New Jersey Green Acres Fund" established pursuant to section 18 of the "Open Space Preservation Bond Act of 1989," P.L.1989, c.183, for the State projects listed in this section, section 1 of P.L.1993, c.217, section 1 of P.L.1991, c.13, and section 1 of P.L.1991, c.522, for the acquisition and development of lands by the State for recreation and conservation purposes and for the purpose of administrative costs associated with any such projects.

e. For reasons of maintaining habitat diversity, preserving wildlife, and preserving the aesthetic and scenic benefits of view-

ing farmland, if any lands acquired by the State pursuant to this act were being actively farmed at the time of acquisition, or within three years prior thereto, the State shall offer farmers the opportunity to lease the lands for farming purposes, according to such procedures, terms, and conditions as may be required by law or otherwise prescribed by the State.

2. The expenditure of the sums appropriated by this act is subject to the provisions and conditions of P.L.1992, c.88, and P.L.1989, c.183, as appropriate.

3. This act shall take effect immediately.

Approved January 11, 1994.

JOINT RESOLUTIONS

(2057)

Joint Resolutions

JOINT RESOLUTION No. 1

A JOINT RESOLUTION creating a commission to study the law of divorce.

WHEREAS, Present State law relating to divorce is based largely on common law and longstanding social practices, as modified in some aspects by statutory and case law; and

WHEREAS, Present law may be considered inadequate to protect the rights of litigants as well as their children; now, therefore,

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

1. There is created a commission to consist of one member of the Senate to be appointed by the President thereof, one member of the General Assembly to be appointed by the Speaker thereof, and nine citizens to be appointed by the Governor. The citizens appointed by the Governor shall include a retired judge, a probation officer, a divorce mediator, the president of the County Prosecutor's Association, a representative from the New Jersey State Bar Association and four public members. The public members shall include one custodial parent, one non-custodial parent, one financial planner with expertise in family financial matters and one mental health professional with experience in the field of child care. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments were made.

2. The commission shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary, who need not be a member of the commission.

3. It shall be the duty of the commission to study the present law of divorce in this State and in other states to determine its adequacy in protecting the rights and obligations of litigants as well as their children, and to make recommendations for desirable and appropriate legislation.

4. The commission is entitled to the assistance and 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, and to employ stenographic and clerical assistants and incur traveling and other miscellaneous expenses necessary to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.

5. The commission may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature and shall report its findings and recommendations to the Legislature no later than 18 months following the organization of the commission with any legislative bills it desires to recommend for adoption by the Legislature.

6. This joint resolution shall take effect immediately and shall expire upon the submission of the report required pursuant to section 5 of this act.

Approved April 5, 1993.

JOINT RESOLUTION No. 2

A JOINT RESOLUTION designating a certain portion of Interstate Highway Route 78 located in Union County as the "Trooper Thomas Joseph Hanratty Section of the Lightning Division Memorial Highway."

WHEREAS, Thomas Joseph Hanratty dedicated his life to serving the citizens of this State as a member of the New Jersey State Police; and

WHEREAS, On April 2, 1992, Thomas Joseph Hanratty met his untimely death at the age of 24 while engaged in his duties as a member of the State Police following a tragic accident in which he was struck by a car after helping a driver with directions on Interstate Highway Route 78, and was the result of his selfless dedication to law enforcement and the exemplary performance of his duties; and

WHEREAS, During his service as a State Trooper, Thomas Joseph Hanratty displayed courtesy and professionalism as he provided protection to the lives and property of the citizens of this State, thus upholding the finest traditions of the Division of State Police; and

WHEREAS, It is altogether fitting and proper that the State of New Jersey take action to honor the memory of this dedicated public servant, particularly by having a portion of Interstate Highway Route 78 in Union County bear his name; now, therefore,

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

1. That portion of Interstate Highway Route 78, designated the Lightning Division Memorial Highway pursuant to the provisions of Joint Resolution No. 7 of 1962, located in the municipalities of Springfield Township, the City of Summit, Mountainside Borough, and Berkeley Heights Township, Union County, shall be designated the "Trooper Thomas Joseph Hanratty Section of the Lightning Division Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate route and directional signs bearing this name.

3. This joint resolution shall take effect immediately.

Approved May 3, 1993.

JOINT RESOLUTION No. 3

A JOINT RESOLUTION pursuant to P.L.1960, c.52 proposing several amendments to the Rules of Evidence.

WHEREAS, After the report of the Supreme Court's Committee on the Rules of Evidence was presented at the 1992 Judicial Conference, the recommendations contained in that report, including the renumbering of the existing rules, were formally adopted by the Supreme Court on September 15, 1992; and

WHEREAS, Unless disapproved by the Legislature, these proposed evidence rules changes are scheduled to take effect July 1, 1993; and

WHEREAS, After several meetings with representatives of the Attorney General's Office and the New Jersey Bar Association, the Supreme Court Committee on the Rules of Evidence has agreed to modification of several of the proposed rule changes; and

WHEREAS, Section 38 of P.L.1960, c.52 (C.2A:84A-38) provides a procedure for the adoption of rules without the necessity for presentation at the Judicial Conference so that their adoption by the Supreme Court may be accelerated; now, therefore,

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

1. Pursuant to section 38 of P.L.1960, c.52 (C.2A:84A-38), the Supreme Court of New Jersey may adopt the amendatory rules specified in this section in the form set out, at any time after this joint resolution has been delivered to and signed by the Governor of the State of New Jersey, by entering an order that the rules are adopted and by causing true copies of its order of adoption to be delivered to the President of the Senate, the Speaker of the General Assembly and the Governor, without again presenting the subject matter and a tentative draft of rules at a Judicial Conference.

A new rule designated as Rule 803 (c) (25) is adopted to read as follows:

Rule 803 (c) (25) Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary, proprietary, or social interest, or so far tended to subject declarant to civil or criminal liability, or to render invalid declarant's claim against another, that a reasonable person in declarant's position would not have made the statement unless the person believed it to be true. Such a statement is admissible against an accused in a criminal action only if the accused was the declarant.

A new rule designated as Rule 803 (c) (27) is adopted to read as follows:

Rule 803 (c) (27) Statements by a child relating to a sexual offense.

A statement by a child under the age of 12 relating to sexual misconduct committed with or against that child is admissible in a criminal, juvenile, or civil proceeding if (a) the proponent of the

statement makes known to the adverse party his intention to offer the statement and the particulars of the statement at such time as to provide him with a fair opportunity to prepare to meet it; (b) the court finds, in a hearing conducted pursuant to Rule 104(a), that on the basis of the time, content and circumstances of the statement there is a probability that the statement is trustworthy; and (c) either (i) the child testifies at the proceeding, or (ii) the child is unavailable as a witness and there is offered admissible evidence corroborating the act of sexual abuse; provided that no child whose statement is to be offered in evidence pursuant to this rule shall be disqualified to be a witness in such proceeding by virtue of the requirements of Rule 601.

A new rule designated as Rule 804 is adopted to read as follows:
Rule 804 Hearsay Exceptions: Declarant Unavailable.

a. Definition of unavailable. Except when the declarant's unavailability has been procured or wrongfully caused by the proponent of his statement for the purpose of preventing him from attending or testifying, a declarant is "unavailable" as a witness if he:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the statement; or

(2) persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of his statement; or

(4) is absent from the hearing because of death, physical or mental illness or infirmity, or other cause, and the proponent of the statement is unable by process or other reasonable means to procure the declarant's attendance at trial, and, with respect to statements proffered under Rules 804(b)(4) and (7), the proponent is unable, without undue hardship or expense, to obtain his deposition for use in lieu of testimony at trial.

b. Hearsay exceptions. Subject to Rule 807, the following are not excluded by the hearsay rule if the declarant is unavailable as a witness.

(1) Testimony in prior proceedings.

(A) Testimony given by a witness at a prior trial of the same or a different matter, or in a hearing or deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered had an opportunity and similar motive in the prior trial, hearing or proceeding to develop the testimony by examination or cross-examination.

(B) In a civil action or proceeding, and only when offered by the defendant in a criminal action or proceeding, testimony given

in a prior trial, hearing or deposition taken pursuant to law to which the party against whom the testimony is now offered was not a party, if the party who offered the prior testimony or against whom it was offered had an opportunity to develop the testimony on examination or cross-examination and had an interest and motive to do so which is the same or similar to that of the party against whom it is now offered.

Expert opinion testimony given in a prior trial, hearing, or deposition may be excluded, however, if the judge finds that there are experts of a like kind generally available within a reasonable distance from the place in which the action is pending and the interests of justice so require.

(2) Statement under belief of imminent death. In a criminal proceeding, a statement made by a victim unavailable as a witness is admissible if it was made voluntarily and in good faith and while the declarant believed in the imminence of declarant's impending death.

(3) [Statement against interest -- adopted as Rule 803 (c)(25)].

(4) Statement of personal or family history. A statement (A) concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, ancestry, relationship by blood, adoption, or marriage, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) concerning the foregoing matters, and the death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with other's family as to be likely to have accurate information concerning the matters declared.

(5) [Other exceptions -- not adopted].

(6) Trustworthy statements by deceased declarants. In a civil proceeding, a statement made by a person unavailable as a witness because of his death if the statement was made in good faith upon his personal knowledge in circumstances indicating that it is trustworthy.

(7) Voters' statements. A statement by a voter concerning his qualifications to vote or the fact or content of his vote.

2. The rules set forth in section 1 of this Joint Resolution, if ordered adopted by the Supreme Court of New Jersey, shall take effect on the date set forth in the court order of adoption.

3. This joint resolution shall take effect immediately upon signature thereof by the Governor; and the Secretary of State is

directed to transmit an authenticated copy forthwith to the Chief Justice of the Supreme Court of New Jersey.

Approved June 30, 1993.

JOINT RESOLUTION No. 4

A JOINT RESOLUTION designating any undesignated portion of United States Highway Route 206 under the jurisdiction of the State Department of Transportation as the "Disabled American Veterans Memorial Highway."

WHEREAS, We, as a country, owe our freedoms to the sacrifice and heroism of the men and women who have served in the armed forces of the United States; and

WHEREAS, Those veterans who responded to the call to serve their country in times of grave national crisis, and who have persevered the adversity of those dangerous times, only to be disabled by certain physical or psychological afflictions as a result of their service, are deserving of special recognition and praise; and

WHEREAS, It is altogether fitting and proper that the Legislature honor the disabled veterans of the armed services of the United States by designating any undesignated portion of United States Highway Route 206 in New Jersey as the "Disabled American Veterans Memorial Highway," and by doing so, recall the qualities of selflessness, honor, courage and devotion to duty that shall forever be remembered by the citizens of a grateful State; now, therefore,

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

1. That portion of United States Highway Route 206 under the jurisdiction of the State Department of Transportation which has not previously received some other designation shall be designated the "Disabled American Veterans Memorial Highway."

2. The Commissioner of Transportation is authorized to erect appropriate route and directional signs bearing this name.

3. This joint resolution shall take effect immediately.

Approved July 16, 1993.

JOINT RESOLUTION No. 5

A JOINT RESOLUTION designating the second week in January as "Cancer Awareness Week" in public schools.

WHEREAS, Cancer is a health problem of major significance in the State of New Jersey, with over 38,000 cancer cases reported annually; the State also has the lowest survival rates for cancer patients in the country; and

WHEREAS, There are more cases of breast and colon cancer reported in New Jersey than any other state in the nation; and

WHEREAS, Early detection is key in providing effective treatment to cancer patients and in lowering the number of cases that lead to death; and

WHEREAS, Increased public awareness programs in public schools can help the State combat this important health problem by teaching children to recognize the warning signs of this often fatal disease; now, therefore,

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

C.18A:40-32 "Cancer Awareness Week" designated.

1. The second week of January shall be designated "Cancer Awareness Week" in all the public schools in New Jersey.

C.18A:40-33 School program development.

2. The Commissioner of Education, in consultation with the State school boards, shall develop a cancer awareness program appropriate for school-aged children.

3. This joint resolution shall take effect immediately.

Approved August 6, 1993.

JOINT RESOLUTION NO. 6

A JOINT RESOLUTION designating the month of May as “Women Veterans Awareness Month.”

WHEREAS, Although brave American women have participated in all of the conflicts in which this country has engaged since 1776, their sacrifices and heroic exploits have generally gone unacknowledged; and

WHEREAS, The importance of women to the military might of this country was highlighted most recently by their notable involvement in the Persian Gulf conflict; and

WHEREAS, Veterans organizations in New Jersey estimate that there are more than 34,000 women veterans residing in this State who have not received the praise and recognition that they deserve; and

WHEREAS, It is fitting and proper that the citizens of this State be asked to pause and pay tribute to the bravery exhibited and sacrifices made by these women, both alive and dead, in their service to this great country; and

WHEREAS, It is appropriate to designate the month of May as “Women Veterans Awareness Month” to acknowledge and commemorate the sacrifices endured and valor displayed by American women veterans; now, therefore,

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

C.36:2-32 “Women Veterans Awareness Month” designated.

1. The month of May is designated as “Women Veterans Awareness Month” in the State of New Jersey to acknowledge and commemorate the sacrifices endured and valor displayed by American women veterans.

2. The Governor shall call upon private organizations and appropriate agencies of State and local government to acknowledge and commemorate May as “Women Veterans Awareness Month.”

3. This joint resolution shall take effect immediately.

Approved August 6, 1993.

JOINT RESOLUTION No. 7

A JOINT RESOLUTION establishing the New Jersey Uniform Securities Law Study Commission.

WHEREAS, The national regulation of securities has undergone substantial expansion since the enactment of the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.), in New Jersey; and

WHEREAS, In the past 26 years there have been significant changes in the securities industry, the securities laws of the United States and of states other than New Jersey and in the practices and procedures of the National Association of Securities Dealers; and

WHEREAS, The purposes, practices and procedures of the New Jersey Bureau of Securities, Division of Consumer Affairs, in the Department of Law and Public Safety have not been independently reviewed since the "Uniform Securities Law (1967)" became effective in New Jersey; now, therefore,

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

1. There is created the New Jersey Uniform Securities Law Study Commission, to consist of seven public members as follows: two members to be appointed by the President of the Senate, who shall not be of the same political party; two members to be appointed by the Speaker of the General Assembly, who shall not be of the same political party; and three public members to be appointed by the Governor, not more than two of whom shall be of the same political party. Any vacancy in the membership of the commission shall be filled by appointment in the same manner as the original appointment was made.

2. The commission shall organize as soon as possible after the appointment of its members. The President of the Senate shall appoint the chairperson of the commission from among the commission members.

3. The commission is directed to study, review, report and make recommendations concerning: amendments to the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.), deemed necessary or appropriate by the commission due to changes in the securities industry and the securities laws and regulations of the federal government and of other states; and changes to the statement of purpose, and the practices and procedures of the Bureau of Securities, Division of Consumer Affairs, in the Department of Law and Public Safety, deemed necessary or appropriate by the commission due to changes in the securities industry, the practices and procedures of the National Association of Securities Dealers and changes in the securities laws and regulations of the federal government.

4. The members of the commission shall serve without compensation, but shall be reimbursed for necessary expenses actually incurred in the performance of their duties. Staff and related support services shall be provided by the New Jersey Department of Law and Public Safety, and 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.

5. The commission may meet and hold public hearings at the place or places it designates during the sessions or recesses of the Legislature and shall issue a final report of its findings and recommendations to the Governor and to the Legislature no later than one year following the initial appointment of all members of the commission.

6. This joint resolution shall take effect immediately and shall expire upon the submission by the commission of its final report pursuant to section 5 hereof.

Approved January 3, 1994.

JOINT RESOLUTION No. 8

A JOINT RESOLUTION creating a “Recreational Sports and Leisure Activities Liability Study Commission” to study liability and immunity laws concerning recreational sports and leisure activities.

WHEREAS, Recreational sports and leisure activities in our State offer enjoyment to millions and are an important part of New Jersey’s economy; and

WHEREAS, Fears of civil litigation may hamper the continued growth and development of businesses offering these activities, depriving the State’s citizens of their benefits; and

WHEREAS, These businesses have a continuing obligation to undertake precautions to protect the safety, health and welfare of our citizens; now, therefore,

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

1. There is hereby created a commission to be known as the “Recreational Sports and Leisure Activities Liability Study Commission” to consist of 14 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; and 10 public members, as follows: three public members appointed by the President of the Senate, no more than two of whom shall be of the same political party, who shall include a representative of the insurance industry with a background in recreational risks, a representative of the recreational sports and leisure activity industry and a ride safety official; three public members appointed by the Speaker of the General Assembly, no more than two of whom shall be of the same political party, who shall include an attorney with defense expertise in recreational sports or leisure activities law, a representative of the New Jersey Amusement Association and a representative of the American Trial Lawyers Association experienced in and knowledgeable with tort liability and recreational sports and leisure activity liability issues and legislative issues; and four public members appointed by the Governor, no more than two of

whom shall be of the same political party, who shall include a former member of the judiciary with experience and knowledge in tort liability issues; a representative of the New Jersey Bar Association; a representative of the equine industry, and a representative of the Business and Industry Association. Any vacancy in the membership of the commission shall be filled by appointment in the same manner as the original appointment was made.

2. The commission shall organize as soon as possible after the appointment of its members. The Governor shall select from among the public members of the commission a chairman and vice-chairman, and shall also select a secretary, who need not be a member of the commission.

3. The commission is directed to study, review and make recommendations concerning New Jersey's laws, policies, and practices concerning civil liability relating to recreational sports and leisure activities. The commission shall investigate and examine the prevalence and effectiveness of lawsuits against recreational sports and leisure activity industries, examining in particular the issue of whether unnecessary and frivolous litigation poses a burden on these industries. The commission shall examine the impact that existing civil immunity laws have had on sports and leisure industries, including, but not limited to, roller skating and skiing, and shall incorporate into its analysis the effectiveness of the State's comparative negligence statute, the effectiveness of pre-activity liability releases and waivers in other jurisdictions and in New Jersey, with a focus on equine activities. The commission shall study other states' laws concerning recreational sports and leisure activities and other states' assumption of risk laws, including, but not limited to, the laws of Wisconsin and California.

The commission shall also examine the effectiveness of New Jersey law concerning frivolous lawsuits and award of counsel fees, and consider the impact of Rule 11 of the Federal Rules of Civil Procedure in this regard. The commission shall examine the methods used by the insurance industry to establish insurance rates for recreational sports and leisure activities, and determine the impact that civil immunity and liability laws have had on these rates; examine the issue of voluntary settlements of claims made by insurance companies, and make any recommendations for legislation which the commission may desire to have enacted,

including, but not limited to, a model law that could be applied to all recreational activities.

4. The commission shall report its findings and recommendations to the Legislature and Governor within six months following the original appointment of all members of the commission. The Legislature and Governor shall respond to the commission's report within 45 days of its issuance.

5. The members of the commission shall serve without compensation, but shall be reimbursed for necessary expenses actually incurred in the performance of their duties. 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.

6. The commission may meet and hold public hearings at the place or places it designates during the sessions or recesses of the Legislature.

7. This Joint Resolution shall take effect immediately and shall expire upon the submission by the commission of its final report pursuant to section 4 hereof.

Approved January 3, 1994.

**AMENDMENT
ADOPTED IN 1993
TO THE 1947 CONSTITUTION**

(2073)

Amendment Adopted in 1993
to the 1947 Constitution

ARTICLE I, PARAGRAPH 2

Amend Article I, paragraph 2 to read as follows:

2. a. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same, whenever the public good may require it.

b. The people reserve unto themselves the power to recall, after at least one year of service, any elected official in this State or representing this State in the United States Congress. The Legislature shall enact laws to provide for such recall elections. Any such laws shall include a provision that a recall election shall be held upon petition of at least 25% of the registered voters in the electoral district of the official sought to be recalled. If legislation to implement this constitutional amendment is not enacted within one year of the adoption of the amendment, the Secretary of State shall, by regulation, implement the constitutional amendment, except that regulations adopted by the Secretary of State shall be superseded by any subsequent legislation consistent with this constitutional amendment governing recall elections. The sufficiency of any statement of reasons or grounds procedurally required shall be a political rather than a judicial question.

Adopted November 2, 1993.
Effective January 1, 1994.

EXECUTIVE ORDERS

(2077)

EXECUTIVE ORDER No.80

WHEREAS, The State prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and

WHEREAS, As of January, 1993 the total adult inmate population of State-sentenced prisoners was 22,277, including 2,896 State-sentenced inmates in county jails; and

WHEREAS, The State's adult and youth correctional institutions are currently operating at 131 percent of design capacity; and

WHEREAS, These conditions continue to endanger the safety, welfare, and resources of the residents of this State; and

WHEREAS, From June, 1981, when Executive Order No. 106 (Byrne) was issued, until this month, the population of State-sentenced prisoners grew from 7,940 to 22,277, far exceeding all predictions for inmate population growth and seriously and dangerously taxing all State correctional facilities; and

WHEREAS, The scope of this crisis prevents local governments from safeguarding the people, property, and resources of the State and mandates a centralized management approach to inmate housing assignments; and

WHEREAS, Despite the construction of three new prisons designed for 3,000 inmates which now house 4,897 inmates at a construction cost of approximately \$150 million, expansions of all existing facilities, and the opening of a new facility at Fort Dix under a lease agreement with the federal government that has been extended through the end of 1993, the prison population growth has consistently outstripped infrastructure expansion throughout the past decade, exacerbating crisis conditions; and

WHEREAS, Efforts are continuing to address the problem, including the planned construction of a new prison facility to be operational by the end of 1995; and

WHEREAS, The Sentencing Policy Study Commission was recently created by statute to review the State's sentencing laws and policies, and the Commission's work may have a significant impact on future prison population; and

WHEREAS, Executive Order No. 52 (Florio) of January 17, 1992, will expire on January 20, 1993; and

WHEREAS, The conditions specified in Executive Order No. 106 (Byrne) of June 19, 1981, continue to present a substantial likelihood of disaster, and in fact have worsened since that time as the prison population has expanded exponentially; and

WHEREAS, Despite the severity of the crisis in the prison population of this State, the Appellate Division of the Superior Court has determined that executive authority to address these emergency conditions under the Civil Defense and Disaster Control Act expires on April 29, 1993; and

WHEREAS, The determination of the Appellate Division is currently on appeal before the New Jersey Supreme Court;

NOW, THEREFORE, I, James J. Florio, 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 declare a continuing state of emergency and ORDER and DIRECT as follows:

1. Executive Order No. 106 (Byrne) of June 19, 1981; No. 108 (Byrne) of September 11, 1981; No. 1 (Kean) of January 20, 1982; No. 8 (Kean) of May 20, 1982; No. 27 (Kean) of January 10, 1983; No. 43 (Kean) of July 15, 1983; No. 60 (Kean) of January 20, 1984; No. 78 (Kean) of July 20, 1984; No. 89 (Kean) of January 18, 1985; No. 127 (Kean) of January 17, 1986; No. 155 (Kean) of January 12, 1987; No. 184 (Kean) of January 4, 1988; No. 202 (Kean) of January 26, 1989; No. 226 (Kean) of January 12, 1990; No. 24 (Florio) of January 18, 1991; and No. 52 (Florio) of January 17, 1992, shall remain in effect until January 20, 1994, notwithstanding any sections in them stating otherwise, subject to the terms of any judicial order setting an earlier expiration date.

2. This Order shall take effect immediately.

Issued January 15, 1993.

EXECUTIVE ORDER No. 81

WHEREAS, Associate Justice Thurgood Marshall devoted his long and distinguished life to advancing the cause of equality and justice in the United States; and

WHEREAS, Justice Marshall, born the son of a Pullman waiter, rose from the ranks of systematic racial segregation and legalized discrimination to become one of the greatest civil rights leaders in our history; and

WHEREAS, While serving as Chief Counsel to the National Association for the Advancement of Colored People, Justice Marshall masterminded the legal strategy that resulted in the dismantling of racial segregation throughout American society; and

WHEREAS, This strategy culminated in the landmark case of Brown v. Board of Education, in which Justice Marshall argued that segregated schools were inherently unequal, and therefore in violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution; and

WHEREAS, The Supreme Court accepted Justice Marshall's arguments, and held that racial segregation by the government is constitutionally intolerable; and

WHEREAS, The Supreme Court's holding in Brown v. Board of Education resulted in the profound transformation of American legal, social, and political life; and

WHEREAS, After Justice Marshall's achievements at the NAACP, President Lyndon Johnson appointed him to be the first African-American Solicitor General; and

WHEREAS, In 1967, President Johnson appointed Justice Marshall to become the first African-American Associate Justice of the Supreme Court; and

WHEREAS, Justice Marshall served for 24 distinguished years on the nation's highest Court, and in that time demonstrated a deep and unswerving dedication to the motto inscribed above the entrance to the Supreme Court building: "Equal justice under law"; and

WHEREAS, In his 24 years on the Supreme Court, Justice Marshall's wisdom and sensitivity breathed the spirit of fairness and compassion into every area of the law; and

WHEREAS, In marking the passing of this national hero, we should renew our pledge to eradicate discrimination from every sphere of society, and deepen our commitment to building a society that treats every human being with equal respect and dignity, regardless of race, ethnicity, gender, or income; and

WHEREAS, It is entirely fitting and proper for the State of New Jersey to mourn the passing, and honor the memory of Thurgood Marshall, and to rededicate ourselves to the just and moral principles to which he devoted his life;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, 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 beginning on Monday, February 1, 1993 and through and including Wednesday, February 3, 1993 in recognition and mourning of the passing of Associate Justice Thurgood Marshall.

2. This Order shall take effect immediately,

Issued January 29, 1993.

EXECUTIVE ORDER No. 82

WHEREAS, The 1.1 million acre Highlands region, stretching from the Delaware River to the Hudson River and encompassing lands of New York and New Jersey, is an area of significant natural beauty containing numerous cultural and historic sites and possessing substantial recreational opportunities; and

WHEREAS, Federal, State, county and local governments in both New Jersey and New York own approximately 148,800 acres in this region, managing them as parks, preserves, water supply areas, historic sites and open space; and

WHEREAS, The State Development and Redevelopment Plan notes that the Highlands is one of but a few of the natural assets of the Garden State that translates into vast recreational and economic opportunity for today's and tomorrow's New Jerseyans; and

WHEREAS, Land preservation efforts in the Highlands Region should link the parks, historic sites, wetlands, wildlife habitats, streams, rivers, reservoirs, watersheds, trails, scenic and natural lands and other protected areas unique to the region between the Delaware and Hudson Rivers for the enjoyment of future generations; and

WHEREAS, Greenways provide a means for forging this link by creating unbroken corridors of forests, streams, lakes, reservoirs, rivers and public trust lands which protect valuable wetlands, scenic and recreation areas and wildlife habitats, shape community development and enhance community pride and beauty; and

WHEREAS, In 1987, the President's Commission on American Outdoors called for a network of greenways across the United States to facilitate the preservation of natural resources for recreational and open space purposes; and

WHEREAS, The Governor's Council on New Jersey Outdoors recommended in its 1991 Annual Report that there should be federal and State assistance in establishing greenway projects; and

WHEREAS, Both the Skylands Greenway Task Force and the U.S. Forest Service Highlands Study recognized the continued threats of uncontrolled suburbanization and urbanization on the natural resources of the region and recommended protection and conservation of the region's important water and contiguous forest resources; and

WHEREAS, The Skylands Greenway Task Force recommends the creation of a Skylands Greenway Council and the U.S. Forest Service Highlands Regional Study recommends a continuing entity to implement conservation and preservation strategies; and

WHEREAS, The recent federal appropriation for the Highlands Region, under the Forest Legacy Program, requires public participation in conservation and preservation recommendations; and

WHEREAS, It is in the interest of New Jersey to create an Advisory Group, including public members, to coordinate land preservation and conservation efforts and provide advice and recommendations to the appropriate State and federal agencies involved in the Highlands Region;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 creation of a Highlands Trust Advisory Board (hereinafter referred to as the "Board") which shall be advisory to the Commissioner of the Department of Environmental Protection and Energy. The responsibilities of the Board shall include, but not be limited to, providing recommendations on lands most suitable for preservation and conservation in the Highlands region. Preservation and conservation shall include natural and historic resources, as well as greenways, defined as a network of protected linkages of natural, cultural and recreational resources planned in such a way as to enhance the local economy. In making its recommendations, the Board should also examine ongoing efforts to identify and inventory natural habitat areas, greenway corridors, cultural resources, historic resources, scenic roads and landscapes. Additionally, recommendations should reflect comprehensive planning and coordination of land preservation and conservation efforts and most efficient use of resources of public and private agencies in the Highlands Region.

The Board should encourage consideration of the natural and recreational resources at the earliest stages of land use planning and promote cooperation between the community, and State and local reviewing agencies.

The Board should coordinate its activities and recommendations with due regard to the State's Forest Legacy Program.

The Board may examine and refine preservation strategies that were recommended in the Skylands Greenway Task Force Report and Highlands Regional Study and make appropriate recommendations.

2. The Board shall be constituted as follows:

a. The Commissioner of the New Jersey Department of Environmental Protection and Energy, or the Commissioner's designee.

b. A representative from the North Jersey District Water Supply Commission.

c. A representative from the Newark Watershed Conservation and Development Corporation.

d. One representative from each of the following private non-profit land holding conservation groups in the Highlands Region: The Nature Conservancy, Trust for Public Land, New Jersey Conservation Foundation, Morris Parks and Land Conservancy, Hunterdon Heritage Conservancy, and New Jersey Audubon Society.

e. The Board shall invite representatives, one each from counties comprising the Highlands region, specifically, Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren, each to be chosen by the respective Board of Chosen Freeholders of counties which choose to participate in Advisory Board activities.

f. The Board may also invite the participation of the Commissioner of the New York Department of Environmental Conservation and/or of the New York State Office of Parks, Recreation and Historic Preservation, or their designees, as well as representatives from New York's Orange and Rockland Counties, the United States Forest Service, National Park Service, United States Fish and Wildlife Service, United States Soil Conservation Service and other interested groups.

3. The geographical boundaries of the region to be studied by the Board shall coincide with those boundaries identified in the U.S. Forest Service Highlands Regional Study. The New Jersey boundaries include, in part or whole, 83 townships in Bergen, Hunterdon, Morris, Passaic, Somerset, Sussex and Warren counties.

4. The New Jersey Department of Environmental Protection and Energy is authorized and directed, to the extent not inconsistent with law, to cooperate with the Board and to furnish it with such information, personnel and assistance as necessary to accomplish the purposes of this Order. The Board may also call upon other State agencies, including the State Planning Commission and Office of State Planning, to provide any information deemed necessary, including statistical and planning data.

5. This Order shall take effect immediately.

Issued February 25, 1993.

EXECUTIVE ORDER No. 83

WHEREAS, Revenues from legalized gaming are used by the State and by many private nonprofit organizations to fund a broad range of services and programs for the citizens of New Jersey; and

WHEREAS, The demand for services and programs currently funded by legalized gaming revenues is likely to continue to increase; and

WHEREAS, The dependence of certain State-funded programs on revenues from legalized gaming raises practical and policy considerations that should be examined periodically on a comprehensive basis to assure that the development of legalized gaming results from conscious policy choices rather than perceived financial necessity; and

WHEREAS, Legalized gaming has produced and continues to produce significant benefits for New Jersey's citizens; and

WHEREAS, There are also social and other costs associated with legalized gaming; and

WHEREAS, New Jersey currently sanctions a variety of types of legalized gaming; and

WHEREAS, The initiation of or changes to a specific type of legalized gaming may affect other types of legalized gaming; and

WHEREAS, The use of legalized gaming to produce public revenues is becoming more prevalent in other jurisdictions; and

WHEREAS, The existence and possible expansion of legalized gaming in other jurisdictions will have an effect on legalized gaming in New Jersey; and

WHEREAS, There is a need to study the policies of this State with regard to legalized gaming in order to ensure that the various factors cited above are given proper consideration in the development of legalized gaming policies for the future;

NOW, THEREFORE, I, JIM FLORIO, 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 created a Legalized Gaming Policy Study Commission, hereinafter referred to as the Commission.

2. The Commission shall consist of 13 members appointed as follows: four public members appointed by the Governor; one member of the Casino Control Commission appointed by the Governor; two members of the Senate (no more than one of whom shall be of the same political party) and one public member appointed by the President of the Senate; two members of the General Assembly (no more than one of whom shall be of the same political party) and one public member appointed by the Speaker of the General Assembly; the Attorney General or his designee; and the Treasurer or his designee. The Chair and Vice Chair of the Commission shall be appointed by the Governor. All members of the Commission shall serve without compensation.

3. The Commission shall study the policies of this State with regard to legalized gaming and shall make recommendations to help ensure that the various factors cited in the Preamble of this Executive Order, and any other factors deemed relevant by the Commission, are given proper consideration in the development of legalized gaming policies for the future. The Commission shall issue its report and recommendations no later than December 31, 1993.

4. The Commission shall receive staff support from the Department of the Treasury and the Department of Law and Public Safety.

5. This Order shall take effect immediately and shall terminate upon the issuance by the Commission of its report and recommendations.

Issued March 5, 1993.

EXECUTIVE ORDER No.84

WHEREAS, Our nation is deeply committed to the universal principle of equality for all, a principle that is forever fixed in our fundamental law through the equal protection clause of the Fourteenth Amendment to the United States Constitution; and

WHEREAS, Since the time of the Civil War, our nation's history has been characterized by a long and difficult struggle to provide every citizen with equal rights under the law; and

WHEREAS, We are still engaged in an historic endeavor to cleanse our social, political, and economic life of invidious discrimination against racial and ethnic minorities, and against women; and

WHEREAS, Our government cannot tolerate discrimination against African-Americans, who continue to suffer from the legacy of racism in America; against women, who have still not been fully admitted to the table of equality; and against ethnic minorities, such as Latinos and Asian-Americans, who also confront barriers of discrimination throughout this society; and

WHEREAS, Our government bears a solemn responsibility to carry out the vision of equality and justice that has long nourished the righteous efforts of the civil rights movement; and

WHEREAS, The civil rights movement in the United States has transformed our legal and political system from one that embraced segregation and other forms of overt discrimination to one that now recognizes the right of every citizen to equal respect and concern; and

WHEREAS, Nevertheless, our society continues to be marred by economic inequalities among our citizens — inequalities that represent the direct and intolerable legacy of this nation's discriminatory past; and

WHEREAS, We owe an abiding obligation to the great civil rights leaders in our history, such as Dr. Martin Luther King, Cesar Chavez, Susan B. Anthony, and Supreme Court Justice Thurgood Marshall, to give the fullest measure of our efforts to eradicate the economic consequences of racial, ethnic, and gender discrimination; and

WHEREAS, We can best achieve the ideal of equal economic opportunity for all not by increasing our reliance on social welfare programs of the past, but by advancing new policies that promote economic self-reliance and entrepreneurial self-sufficiency; and

WHEREAS, In 1985, this State adopted with widespread support an innovative set-aside policy that guaranteed businesses owned by racial and ethnic minorities, and businesses owned by women an opportunity to obtain a fair portion of public contracts; and

WHEREAS, New Jersey's set-aside program not only redressed historic discrimination in the marketplace, but also advanced the critical interest of providing historically disadvantaged groups with the means and the experience to compete fairly in the economic setting; and

WHEREAS, In the 1989 case of City of Richmond v. Croson, the United States Supreme Court invalidated a City of Richmond set-aside program on the grounds that the city had failed to meet strict standards of constitutional scrutiny, which require that such policies be justified on the basis of evidence of actual discrimination, and that such policies be narrowly tailored to remedy such discrimination; and

WHEREAS, After Croson the set-aside program in New Jersey was suspended; and

WHEREAS, On August 14, 1989, in response to the Croson case, Governor Thomas H. Kean issued Executive Order No. 213, which established the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts (hereinafter the "Study Commission"); and

WHEREAS, The Executive Order directed the Study Commission to "investigate the nature and scope of any discriminatory practices" that exist in the awarding of construction and procurement contracts by the State of New Jersey, to "prepare an analysis of this information in order to develop probative evidence of any prior or present discrimination" in the awarding of such contracts, and to "identify and evaluate remedies for these practices consistent with guidelines established by the Supreme Court in Croson"; and

WHEREAS, The Study Commission, which has been continued throughout this Administration, has worked diligently since its formation to fulfill its mandate, and has presented me with its final report, complete with extensive findings and comprehensive proposals; and

WHEREAS, The Study Commission's report is based upon a thorough statistical analysis comparing the volume of contract dollars awarded by State agencies to firms owned and operated by minorities and women to the numbers of such firms that are qualified and available to provide goods and services to the State; and

WHEREAS, The Study Commission's report also contains extensive anecdotal and historical evidence revealing widespread discrimination in the marketplace, with which the State passively participates; and

WHEREAS, This compelling statistical and anecdotal evidence establishes a convincing case that firms owned and operated by racial and ethnic minorities, as well as firms owned and operated by women, experience widespread exclusion from the contracting process; and

WHEREAS, I have been advised by the Attorney General that the evidence set forth in the Study Commission's final report supplies a constitutionally permissible basis for establishing a set-aside policy under the strict scrutiny standards enunciated in the Croson case; and

WHEREAS, Government must take every necessary and practicable step toward eradicating racial, ethnic, and gender discrimination from our society;

NOW, THEREFORE, I, JAMES J. FLORIO, 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. Pursuant to the Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A.52:32-17 et seq., the New Jersey Sports and Exhibition Authority Law, N.J.S.A.5:10-1 et seq., the Casino Control Act, N.J.S.A.5:12-1 et seq., the New Jersey Wastewater Treatment Trust Act, N.J.S.A.58:11B-1 et seq., the New Jersey Urban Development Corporation Act, N.J.S.A.55:19-1 et seq., the New Jersey Local Development Financing Fund Act, N.J.S.A.34:1B-36, and the New Jersey Transportation Trust Fund Authority Act of 1984, N.J.S.A.27:1B-1 et seq., every agency, department, and instru-

mentality of the State of New Jersey that is authorized to award procurement or construction contracts shall forthwith adopt a set-aside policy in accordance with the foregoing statutory provisions and with this Executive Order.

2. In particular, every such State contracting agency shall adopt a set-aside program that requires the agency to make a good faith effort to award 7% of public procurement and construction contracts and subcontracts to qualified businesses owned and operated by African-Americans, Latinos, and Asian-Americans, and 3% of public procurement and construction contracts and subcontracts to qualified businesses owned and operated by women.

3. These numerical goals shall be pursued to the fullest degree consistent with practicality, and only insofar as to advance the State's interest in awarding contracts to firms with the necessary qualifications, regardless of race, ethnicity or gender. Furthermore, any set-aside program established as directed by this Order shall specifically authorize the department or agency administering the set-aside program to award contracts regardless of race, ethnicity, or gender, notwithstanding the numerical goals set forth above, whenever qualified minority- or women-owned businesses are unavailable to perform the services or supply the goods sought.

4. Any set-aside program established pursuant to this Order is remedial in nature and in purpose, and therefore shall be in effect with respect to each affected group only until such time as the discriminatory conditions that form the basis of the set-aside program are eradicated.

Issued March 5, 1993.

EXECUTIVE ORDER No. 85

WHEREAS, Severe weather conditions of March 13, 1993, including snow, heavy rains, winds and high tides have created flooding, hazardous road conditions, and threatened homes and other structures throughout the State; and

WHEREAS, These weather conditions pose a threat and constitute a disaster from a natural cause which threatens and presently does endanger the health, safety or resources of the residents of more than one municipality and county 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 in its entirety by the normal municipal operating services; and

WHEREAS, The Constitution and Statutes of the State of New Jersey, particularly the provisions of the Laws of 1942, c.251 (N.J.S.A.App.A:9-30 et seq.) and the Laws of 1979, c.240 (N.J.S.A.38A:3-6.1) and the Laws of 1963, c.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 J. FLORIO, 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 limited State of Emergency has and presently exists throughout the State since 10:30 a.m. on Saturday, March 13, 1993.

1. In accordance with the Laws of 1963, c.109 (N.J.S.A.38A:2-4), I hereby authorize the Adjutant General of the New Jersey National Guard to order to active duty such members of the New Jersey National Guard that, in his judgment, are necessary to provide aid to those localities 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. In accordance with the Laws of 1942, c.251 as supplemented and amended, I hereby empower the Superintendent of the Division of State Police, who is the State's Director of Emergency Management, 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 he, in his discretion, deems necessary for the protection of the health, safety and welfare of the public.

3. The Superintendent of the Division of State Police is further authorized and empowered to restrict vehicles from using the State highways and to remove all abandoned or parked vehicles from State highways and take all other actions necessary to secure the health, welfare and safety of the people during this limited State of Emergency.

4. The Superintendent of the Division of State Police is further authorized and empowered to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may be stranded on the highways or evacuated from their residences during the course of this emergency.

5. The Superintendent of the Division of State Police is hereby authorized to order the evacuation of all persons, except for those emergency and governmental personnel whose presence he 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. In accordance with the Laws of 1942, c.251, 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 men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency.

7. This Order shall take effect immediately and it shall remain in effect until such time as it is determined by me that an emergency no longer exists.

Issued March 15, 1993.

EXECUTIVE ORDER No. 86

WHEREAS, Executive Order No. 85 declared a State of Emergency effective March 13, 1993 because of severe weather conditions which threatened the health, safety and resources of the residents of this State; and

WHEREAS, The immediate threat posed by the severe weather conditions of March 13, 1993 and since have passed and ceased to endanger the health, safety or resources of residents; and

WHEREAS, I wish to express my personal appreciation to the people of New Jersey for the manner in which they cooperated during this emergency and to the law enforcement, military and emergency response personnel of the State for their untiring efforts;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 declare that the State of Emergency is hereby terminated effective at 5 p.m. on March 15, 1993.

This Order shall take effect immediately.

Issued March 15, 1993.

EXECUTIVE ORDER No. 87

WHEREAS, The respective branches of the military have proposed to the federal Defense Base Closure and Realignment Commission certain base closings and realignments throughout the nation; and

WHEREAS, Three major defense facilities in New Jersey have been proposed for closure or realignment: Fort Monmouth, Monmouth County; McGuire Air Force Base, Burlington County; and the Naval Air Warfare Center, Mercer County; and

WHEREAS, These base closing and realignments, and the general reduction in federal spending for national defense purposes, will have a significant impact upon defense firms, communities and workers, thus affecting the economy of the State and the prosperity, safety, health and general welfare of our citizens and their standard of living; and

WHEREAS, There is a need for the State to take immediate action to prepare for and address the economic repercussions that may befall the State as a result of the Commission's recommendations; and

WHEREAS, An assessment must be made as to the potential impact of declining defense expenditures on the State's economy; and

WHEREAS, There is a need for identify and evaluate all federal and State programs that may be of assistance to defense firms, communities and other businesses interested in conversion or joint use; and

WHEREAS, New State initiatives must be developed and the activities of existing programs and personnel must be coordinated in order to meet the specific needs of businesses, communities and workers; and

WHEREAS, The State must develop and implement a comprehensive plan to ensure New Jersey's continued economic growth;

NOW, THEREFORE, I, JIM FLORIO, 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 created the "Defense Conversion and Community Assistance Commission" (hereinafter "Commission").

2. The Commission shall consist of a minimum of 25 members and a maximum of 50 members. The public members of the Commission shall be appointed by the Governor who shall include representatives from, but not be limited to, contracting firms, organized labor, academia, banking and financial institutions, air freight and air transport associations and community leaders. This Commission shall also include as ex officio members the Commissioners of the Departments of Commerce and Economic Development, Labor, Transportation, Environmental Protection and Energy, and Banking; the Adjutant General of the Department of Military and Veterans' Affairs; the Executive Director of the Economic Development Authority; and the Chairs of the Commission on Science and Technology and the Commission on Employment and Training; or their designees. Furthermore, there shall be two members who shall be representatives from the United States Congress. An additional four members of the Com-

mission shall be State legislators, two of whom shall be appointed from the Senate and be appointed by the Senate President (no more than one of whom shall be of the same political party), and two of whom shall be appointed from the General Assembly and be appointed by the Speaker (no more than one of whom shall be of the same political party). The Chair and Vice-Chair of the Commission shall be designated from among the members by the Governor. All members shall serve without compensation.

3. The Commission shall study the economic impact of the defense base closings and federal defense spending reduction upon defense firms, communities, local businesses and workers and make recommendations to ensure that the various factors cited in the preamble of this Executive Order, and other factors deemed relevant by the Commission, are given proper consideration.

4. The Commission shall coordinate for the State of New Jersey the receipt and distribution of all funds to be used to implement those programs that have been recommended by the Commission to mitigate the impact of defense base closure and realignment, defense industry conversion and community and worker assistance, unless otherwise specified by law.

5. Subject to the approval of the Governor, the Commission may prepare and approve a budget to be funded through available federal and State funds to conduct forums, to reimburse members of the Commission for reasonable and necessary expenses for attending Commission meetings and performing Commission duties, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions.

6. The Commission is authorized to call upon any department, office, division or agency of this State to supply it with data and any 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 Commission and 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.

Issued March 29, 1993.

EXECUTIVE ORDER No. 88

WHEREAS, In recognition of our recent celebration of Women's History Month, it is appropriate for the State of New Jersey to redouble its efforts to advance the cause of equality for all women; and

WHEREAS, All women enjoy a fundamental right to be treated with equal respect and dignity; and

WHEREAS, Sexual harassment of any kind is totally repugnant to basic principles of equality; and

WHEREAS, The threat of sexual harassment in the workplace continues to hinder the progress of women in professional life; and

WHEREAS, Women have the right to be totally free from unwanted sexual advances and other forms of sexual harassment that create an intolerable and offensive atmosphere in the workplace; and

WHEREAS, This State must take every necessary and appropriate step toward eradicating sexual harassment and gender discrimination from the workplace; and

WHEREAS, The New Jersey Department of Personnel currently operates a successful training program through its Human Resource Development Institute that is designed to educate State employees on this important topic; and

WHEREAS, The State should ensure that all governmental entities adopt effective policies to eradicate sexual harassment from the workplace;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, do hereby ORDER and DIRECT:

1. The Commissioner of Personnel shall conduct a comprehensive review of the State's current policies, practices, and procedures for eradicating sexual harassment from the government workplace. The Commissioner of Personnel, working in cooperation with the Personnel Advisory Board, shall examine current policies, practices, and procedures, including N.J.A.C.

4A:7-1.2 et seq., to determine how these practices and procedures can be made more effective and sensitive to the needs of victims of sexual harassment. The Commissioner of Personnel shall submit a final report to me no later than ninety (90) days after the date of this Executive Order.

2. The final report shall set forth findings and recommendations, and shall address all relevant issues including: (a) What are the current practices and procedures employed by the nineteen principal State departments as well as State authorities and colleges?; (b) Do these practices and procedures respond adequately to the needs of victims of sexual harassment?; (c) Do these practices and procedures provide adequate sanctions for those who are found to have committed acts of sexual harassment?; (d) Are these practices and procedures uniform throughout all units of State government?; and (e) Are State employees adequately advised of the nature of sexual harassment and the remedies that exist?

3. Concurrent with the preparation of this report, all State agencies, departments, authorities, and instrumentalities shall develop a plan for providing anti-sexual harassment training programs or seminars for employees and/or for management and administrative personnel. In particular, the nineteen principal State departments shall make available to employees the anti-sexual harassment program as administered through the Human Resources Development Institute in the Department of Personnel.

4. This Order shall not be construed to apply to local, county, or municipal governments.

5. This Order shall take effect immediately.

Issued April 4, 1993.

EXECUTIVE ORDER No. 89

WHEREAS, The Cuban people have demonstrated a great longing for freedom and democracy, and have expressed increasing opposition to the Castro regime; and

WHEREAS, The Cuban people have recently risked their lives by organizing democratic activities on the island and by undertaking dangerous and courageous flights for freedom to the United States and other countries; and

WHEREAS, In light of the recent upheavals in the former Soviet Union and in Eastern Europe, the Cuban-American community in New Jersey eagerly awaits the time when similar movements for democratic reform gather strength and momentum in Cuba; and

WHEREAS, The Cuban-American community in New Jersey ardently looks forward to the inevitable day when the Cuban people are forever liberated from communist dictatorship, and the Cuban people are free to form a government that is democratic, respects human rights, and honors the rule of law; and

WHEREAS, A liberated Cuba will enable the Cuban people to engage in social, cultural, and economic exchanges with the people of the United States, including the citizens of New Jersey; and

WHEREAS, A free and open exchange of ideas, people, and goods will greatly benefit the people of Cuba as well as the people of the United States; and

WHEREAS, New Jersey should prepare to take full advantage of these inevitable developments in Cuba; and

WHEREAS, It is appropriate and necessary to undertake a thorough review of the possible impact that these profound social and political changes will have on the State of New Jersey and its residents;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 light of the enormous potential for democratic change in Cuba, the New Jersey Department of Commerce and Economic Development shall conduct a study to determine the likely social, economic, and cultural consequences that would result from the liberation of the people of Cuba. In particular, the Department of

Commerce shall prepare a plan setting forth a strategy that will enable the State of New Jersey to take full advantage of the social, cultural, and economic opportunities that would result from democratic reform in Cuba.

2. The Department of Commerce shall whenever necessary coordinate this effort with any and all other State departments having relevant expertise or knowledge of such issues.

3. The Department of Commerce shall report its findings to me no later than one year following the date of this Order.

4. This Order shall take effect immediately.

Issued April 15, 1993.

EXECUTIVE ORDER No. 90

WHEREAS, The New Jersey-Israel Commission (Commission) was created on May 31, 1989 by Executive Order No. 208 to enhance New Jersey's ability to implement the development of trade, capital investment and joint business ventures in addition to the development of cultural and educational exchanges between New Jersey and Israel as stated in the Sister State Agreement with Israel (Agreement); and

WHEREAS, The Commission originally was scheduled to expire on May 31, 1991; and

WHEREAS, The Commission was extended pursuant to Executive Order No. 35 dated July 16, 1991, which in part authorized the continuance of the Commission through and including May 31, 1993; and

WHEREAS, The Commission has helped to foster a spirit of cooperation between the citizens of Israel and the citizens of New Jersey that should continue to be available in order to achieve the goals of the Agreement;

NOW THEREFORE, I, JAMES J. FLORIO, 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 New Jersey-Israel Commission shall continue in existence through and including May 31, 1995.
2. All other provisions of Executive Order No. 35 which are not inconsistent with the foregoing shall remain in full force and effect.
3. This Order shall take effect immediately.

Issued April 29, 1993.

EXECUTIVE ORDER No. 91

WHEREAS, The procurement of products manufactured or produced from a percentage of recycled materials is acknowledged as the keystone of a successful recycling program; and

WHEREAS, Purchases by federal, state and local governments account for nearly 20 percent of the Gross Domestic Product of the United States; and

WHEREAS, Government procurement of recycled products can exert economic leverage to make recycled products more competitive with products manufactured from virgin materials and move recycled products into the marketplace; and

WHEREAS, Government procurement of recycled products can persuade manufacturers to develop greater production capacity, invest in research on recycled products and introduce new recycling technologies; and

WHEREAS, State laws require and provide economic incentives for the purchase of recycled products by State agencies; and

WHEREAS, State law and policy mandate the recycling of 60 percent of the solid waste stream, thereby reducing the amount of solid waste requiring disposal, conserving valuable resources and energy, and increasing the supply of reusable materials for New Jersey's industries; and

WHEREAS, Local governments and private firms across New Jersey, in response to State law and policy, each year collect greater volumes of recyclable materials to be returned to the economic mainstream through remanufacturing and other recycling techniques; and

WHEREAS, Executive Order No. 34 (1991) requires State agencies to serve as models for public and private entities in source reduction and recycling, and these State agencies should also serve as models to promote the expanded procurement of recycled products by public and private entities;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of this State, do hereby ORDER and DIRECT:

1. That each State agency and instrumentality shall implement the following mandates:

A. Appoint, within 30 days of the effective date of this Order, a coordinator from the agency procurement staff who will be responsible for coordinating with the Division of Purchase and Property in the Department of the Treasury (hereinafter "Division of Purchase and Property") and the Division of Solid Waste Management in the Department of Environmental Protection and Energy (hereinafter "Division of Solid Waste Management") for the procurement of recycled products by the agency or instrumentality. The coordinator's responsibility is to ensure agency compliance with the purchasing goals of this Order.

B. Require the purchase of recycled paper and paper products of comparable quality with virgin products, with consideration given to recycled paper and paper products containing the highest percentage of post-consumer waste paper material, when such purchase is competitive as defined below. In the event that this requirement is impossible to meet due to mill or vendor supplies of paper and paper products containing recycled secondary and post-consumer content, each State agency or instrumentality shall meet, at minimum, the following purchasing schedule:

(1) Effective immediately, not less than 55 percent of the total dollar amount of paper and paper products purchased by any State agency or instrumentality shall be made from recycled paper or paper products, having a total weight consisting of not less than 50 percent secondary

waste paper material and with not less than 10 percent of its total weight consisting of post-consumer waste paper materials;

(2) On and after July 1, 1993, not less than 60 percent of the total dollar amount of paper and paper products purchased by the State shall be made from recycled paper or paper products having a total weight consisting of not less than 50 percent secondary waste paper material and with not less than 15 percent of its total weight consisting of post-consumer waste paper materials;

(3) On and after January 1, 1995, not less than 65 percent of the total dollar amount of paper and paper products purchased by the State shall be made from recycled paper or recycled paper products having a total weight consisting of not less than 50 percent secondary waste paper material and with not less than 25 percent of its total weight consisting of post-consumer waste paper material; except that high grade office paper, fine paper, bond paper, offset paper, xerographic paper, mimeo paper and duplicator paper shall be made from recycled paper having a total weight consisting of not less than 50 percent secondary waste paper material and with not less than 15 percent of its total weight consisting of post-consumer waste paper material.

Except as otherwise provided by law, the Division of Purchase and Property, in consultation with the Division of Solid Waste Management, shall have discretion and authority to modify the procurement rate guidelines established in B.(1) above.

For the purposes of purchasing recycled paper and paper products, "competitive" means a price no more than 10 percent above the price of items which are manufactured or produced from virgin paper products, except that the director, upon consultation with the department, may make contracts available for recycled paper or recycled paper products at a price no more than 15 percent above the price of virgin paper products whenever the director determines that a 15 percent price preference is in the best interest of the State.

C. Print all publications and documents, including those publications and documents printed under the supervision of a State agency or instrumentality, on recycled paper where adequate supplies are available and the purchase of recycled paper is competitive as defined in this Order. The phrase "printed on recycled paper," "recycled paper" or words or symbols to that effect should be imprinted on the publication or document.

D. Review and modify all bid and product specifications, in consultation with the Division of Purchase and Property, to

ensure that such specifications do not discriminate, without a sound technical or economic basis, against the purchase or use of paper or nonpaper recycled products, but encourage the maximum purchase of products made from recycled materials, (e.g. where feasible, brightness standards or their equivalents for paper or paper products shall be lowered or eliminated to remove any impediments which these standards may pose to the purchase of recycled paper or paper products).

E. Review and develop specifications for paper and nonpaper finished products, purchased by the agency or instrumentality, which are composed primarily of a single material, such as metal, glass, or plastic, to give priority to those single-material products containing recycled, post-consumer metal, glass, plastic or other recycled materials, and meet any procurement rate guidelines set for specific product or material classes by the Division of Purchase and Property, in consultation with the Division of Solid Waste Management.

F. Utilize, where technically feasible, competitively priced (as defined below) and environmentally sound, compost, mulch and other soil amendments made from municipal solid waste, sludge, yard waste, clean wood waste, and other organic materials, in descending order of priority, where the agency or instrumentality is responsible for the maintenance of public lands, engages in landscaping activities or performs construction activities at State facilities or projects. The compost derived from these listed organic waste materials shall be used in lieu of any chemical fertilizer or soil amendment.

G. Purchase re-refined motor oil, when competitively priced as defined below, for use in automobiles or other vehicles maintained by the agency or instrumentality according to the following schedule:

(1) By December 31, 1993, not less than 5 percent of the total dollar amount expended for the purchase of motor oil shall be for the purchase of re-refined motor oil;

(2) By December 31, 1994, not less than 10 percent of the total dollar amount expended for the purchase of motor oil shall be for the purchase of re-refined motor oil;

(3) By December 31, 1995, not less than 15 percent of the total dollar amount expended for the purchase of motor oil shall be for the purchase of re-refined motor oil;

(4) By December 31, 1996, not less than 20 percent of the total dollar amount expended for the purchase of motor oil shall be for the purchase of re-refined motor oil.

Re-refined motor oil is defined as oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

H. Purchase, when competitively priced as defined below, retreaded, remolded or remanufactured vehicle tires for automobiles or other vehicles, excluding law enforcement vehicles, according to the following schedule:

(1) By December 31, 1993, not less than 5 percent of the total dollar amount expended for the purchase of tires shall be for the purchase of retreaded, remolded or remanufactured tires;

(2) By December 31, 1994, not less than 10 percent of the total dollar amount expended for the purchase of tires shall be for the purchase of retreaded, remolded or remanufactured tires;

(3) By December 31, 1995, not less than 15 percent of the total dollar amount expended for the purchase of tires shall be for the purchase of retreaded, remolded or remanufactured tires;

(4) By December 31, 1996, not less than 20 percent of the total dollar amount expended for the purchase of tires shall be for the purchase of retreaded, remolded or remanufactured tires;

(5) By December 31, 1997, not less than 25 percent of the total dollar amount expended for the purchase of tires shall be for the purchase of retreaded, remolded or remanufactured tires.

I. Purchase the following nonpaper finished recycled materials or products in lieu of manufactured or virgin materials whenever these materials or products are competitively priced, as defined below, with comparable products manufactured or produced from virgin materials:

(1) recycled concrete aggregate and recycled asphalt pavement;

(2) glassphalt (recycled glass);

(3) asphalt pavement or asphalt pavement patching material made with recycled asphalt shingles;

(4) asphalt containing recycled fly ash from coal;

(5) recycled plastic lumber, snow fencing, fencing or sign posts.

For the purposes of purchasing the recycled nonpaper finished products referenced immediately above, "competitive" or "competitively priced" shall mean a price no more than 10 percent above the price of comparable products or materials manufactured or produced from virgin materials. Any agency shall have the authority to reject a competitively priced bid for a recycled nonpaper finished product if that agency makes a determination that the price offered for the recycled nonpaper finished product or material is not accurately reflective of general market conditions

for the product or material, based on the agency's past procurement experiences, current market analysis or information gained from other comparable jurisdictions.

As an alternative to the above, within the State agency bidding procedures as established by law and the preferential pricing structure contained in this Order, any agency may offer rebates to vendors for the use of recycled nonpaper finished products or materials in the supplying of any nonpaper finished product or material.

Except as otherwise provided by State agency bidding procedures established by law, any agency may, upon consultation with the Division of Solid Waste Management, make contracts (other than State term contracts) available for recycled nonpaper finished products or materials at a price no more than 15 percent above the price of comparable virgin products or materials, whenever the agency determines that a 15 percent price preference is in the best interests of the State.

For the purposes of this Order, "nonpaper finished products" shall mean all nonpaper products and materials purchased by any agency or instrumentality. For the purposes of purchasing nonpaper finished products, "post consumer material" shall include any finished product generated by a business or consumer which has served its intended end use, and which has been separated from solid waste for the purposes of collection, recycling and disposition, but shall not include waste material generated after the completion of a manufacturing process.

Where technically feasible, competitively priced and environmentally sound, each agency shall purchase nonpaper finished products containing the highest percentage of post-consumer material.

J. Require that appliances and cooling and air conditioning systems containing refrigerants (CFCs and HCFCs) be appropriately handled by purchasing and using refrigerant recovery equipment or contracting with a vendor to recover the refrigerants prior to recycling the appliance, pursuant to Section 5.1 of New Jersey's Recycling Regulations, N.J.A.C. 17:26A-1.1 et seq. and Section 608 of the federal Clean Air Act Amendments.

K. Report semi-annually by January 1 and July 1, in writing to the Division of Solid Waste Management on the types, volume and dollar amounts of recycled paper and nonpaper finished products purchased, exclusive of State term contracts. This reporting requirement shall not apply to term contracts and Purchase Bureau line-item purchases.

L. Require government contractors and grantees, where permissible by law, to conform to the recycled paper and nonpaper finished products procurement guidelines set forth in this Order. As appropriate, these requirements shall be applied to contractors and grantees in procuring products or materials to perform contractual services for the State agency or instrumentality, providing a work product for the State agency or instrumentality, or conducting work funded by a grant from the State agency or instrumentality.

As needed to monitor conformance to these requirements, contractors and grantees may be further required to report to the State agency or instrumentality the types, quantities and total dollar amounts of recycled paper and nonpaper finished products purchased by the contractor or grantee in connection with government-funded work.

2. I further direct that the Division of Purchase and Property in the Department of the Treasury shall:

A. Ensure that all bid specifications define competitive pricing for recycled products as defined in State law and this Order.

B. Give priority consideration to the procurement of products which contain the highest percentage of post-consumer waste material.

C. Require vendors, where appropriate, to supply a manufacturer's certification that states the percentage of post-consumer waste material contained in the recycled product and, in the case of recycled paper products, states the percentage of secondary waste paper material content.

D. Identify and review, in consultation with the Division of Solid Waste Management in the Department of Environmental Protection and Energy, bid specifications adopted by other State agencies and instrumentalities that may discriminate, without a sound technical or economic basis, against the purchase or use of recycled products and materials and advise these State agencies or instrumentalities on modifications to the specifications that are necessary to promote the purchase or use of recycled products and comply with this Order.

E. Purchase photocopy machinery, including warranties, which do not restrict the use of recycled xerographic paper, and that provide for effective duplex copying.

F. Ensure that janitorial service contracts include a provision that such services supply recycled paper products for use in State-owned or leased buildings.

G. Review and revise State bid specifications, contracts and procedures in order to provide information to identify those contracts and commodities which constitute recycled products or contain recycled materials, and the quantities ordered and dollar amounts expended for those products.

H. Report semi-annually to the Division of Solid Waste Management in the Department of Environmental Protection and Energy on the types, volumes and dollar amounts of recycled product purchases covered by term contracts, Purchase Bureau line-item purchases, and direct purchases.

3. I further direct that the Department of Transportation shall:

A. Continue to serve as the lead agency in the development of specifications for the use of recycled materials in roadway construction and maintenance as identified in this Order.

B. Achieve a minimum utilization rate for asphalt pavement containing recycled rubber, as a percentage of the total tons of asphalt pavement used in roadway construction, resurfacing or maintenance, including those utilization rates required pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), as follows, whenever such utilization is competitively priced as defined above:

- (1) A minimum of 5 percent by December 31, 1994;
- (2) A minimum of 10 percent by December 31, 1995;
- (3) A minimum of 15 percent by December 31, 1996;
- (4) A minimum of 20 percent by December 31, 1997;
- (5) A minimum of 25 percent by December 31, 1998;
- (6) A minimum of 30 percent by December 31, 1999;
- (7) A minimum of 35 percent by December 31, 2000;
- (8) A minimum of 40 percent by December 31, 2001.

If the Department of Transportation, in consultation with the Division of Solid Waste Management, determines that meeting any of the above-identified utilization rates is not feasible, the Department of Transportation shall submit to the Governor's Office, within 90 days of each annual utilization rate identified above, a written analysis that identifies the technical, economic or environmental constraints that preclude such use, and describe any steps that may be taken to eliminate these constraints. Such analyses, if any, shall not relieve the Department of Transportation of its responsibilities for attaining any other annual utilization rate listed.

4. I further direct that the Department of Community Affairs shall:

A. Review existing construction specifications contained in the New Jersey Uniform Construction Code and revise any specifications that discriminate, without a sound technical or economic basis, against the use of recycled products or materials for building construction. This shall be carried out within one year of the effective date of this Order and in consultation with the Division of Solid Waste Management in the Department of Environmental Protection and Energy.

B. Review and revise all regulations, in consultation with the Division of Solid Waste Management, to include the provision that permits for all construction-related activities shall indicate the markets for the disposition of all recyclable materials generated from the permitted activities, and shall require the maximum practical use of recycling alternatives available in conformance with N.J.S.A.52:27D et seq., P.L.1975, Chapter 217, New Jersey Uniform Construction Code, N.J.A.C. 5:23.

5. I further direct that the Division of Solid Waste Management in the Department of Environmental Protection and Energy shall:

A. Provide technical assistance to State agency coordinators to develop and implement the programs mandated by this Executive Order, in consultation with the Division of Purchase and Property in the Department of the Treasury.

B. Assist other agencies and instrumentalities in the development and implementation of educational programs for the procurement of recycled products in consultation with the Division of Purchase and Property.

C. Promote innovative research and development to identify new recycled products to be purchased by State agencies and instrumentalities.

6. This Order shall take effect immediately.

Issued May 3, 1993.

EXECUTIVE ORDER No. 92

WHEREAS, The citizens of New Jersey are entitled to a government that earns their trust and inspires their confidence; and

WHEREAS, Nowhere is the question of public trust and confidence more important than in the area of government contracting; and

WHEREAS, Our government should award contracts in a manner that not only guarantees the best price for the taxpayers, but also ensures scrupulous adherence to ethical principles; and

WHEREAS, Competitive bidding is the only method of awarding contracts that consistently produces the best economic results and the highest degree of integrity; and

WHEREAS, The public contracting process must be competitive on the merits, open to public scrutiny, and effective at producing the highest quality at the lowest cost; and

WHEREAS, Although current law requires the State to award most contracts on the basis of competitive bidding, a number of legal exceptions exist that may undermine the public's confidence in the contracting system; and

WHEREAS, We must take every opportunity to supplement our State's bidding laws by adopting procedures guaranteeing that all contracts are awarded on the basis solely of price and quality; and

WHEREAS, These exceptions to the bidding process — such as bond underwriting, bond counsel, architects and other professional services — ought to be subjected to the disciplining force of competition; and

WHEREAS, For these reasons, on January 12, 1993, I issued Executive Order No. 79 directing the State Treasurer to adopt procedures for imposing competitive bidding requirements on these areas of exception under current law; and

WHEREAS, I have received a report from the State Treasurer which recommends a series of positive changes to the way our government awards contracts in areas that are currently exempted from competitive bidding; and

WHEREAS, These proposals, for the first time, would require each and every State government entity, including all State authorities, to award underwriting and bond counsel contracts on the basis of open and public competition; and

WHEREAS, These proposals, for the first time, would require each and every State government entity, including all State authorities, to award architectural, engineering, and other professional contracts on the basis of open and public competition; and

WHEREAS, Consistent with the letter and spirit of Executive Order No. 79 (1993), these proposals would put procedures into place that significantly exceed the threshold requirements of the State's current bidding laws, as set forth in P.L. 1954, c. 48 (C.52:34-6 et seq.); and

WHEREAS, These proposals represent a creative solution to the problem of imposing standardized, competitive procedures on all of State government while also allowing sufficient flexibility to accommodate the unique needs of the many different functions of government; and

WHEREAS, By implementing these proposals immediately, we can take yet another step forward in our steady attempts to reform government — an effort that has included requiring greater reliance on market competition for awarding State leases, as implemented through Executive Order No. 65 (1992);

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, do hereby ORDER and DIRECT:

1. It is hereby the policy of the State of New Jersey that all bonds, notes, or similar instruments shall be issued on the basis of competitive bidding, in accordance with the procedures set forth in the State Treasurer's report to me dated May 3, 1993. In particular, these procedures shall establish a presumption that, for any and all issuances of bonds, notes, or other instruments, the issuing department, authority, or instrumentality shall select a qualified underwriter on the basis solely of price, as determined by sealed bids submitted after public notification. In addition, this procedure shall be consistent with Executive Order No. 84 implementing the State's minority and women set-aside program. Under extraordinary circumstances and only for good cause shown, the State Treasurer may approve written requests to issue bonds, notes, or other instruments on the basis of a negotiated sale, but only upon a prior written and publicly disclosed finding by the State Treasurer setting forth in detail the justification for granting such approval.

2. Furthermore, it is hereby the policy of the State of New Jersey that any contract or retainer agreement with an attorney or law firm in connection with a particular issuance of bonds, notes, or other instruments, shall be awarded on the basis of open and fair competition, in accordance with the procedures set forth in the State Treasurer's report to me dated May 3, 1993. In particular, the State Treasurer shall establish procedures, applicable to all departments and authorities, for selecting bond counsel through a process of pre-qualification and sealed bidding. The pre-qualification process shall guarantee that law firms or attorneys serving as bond counsel possess the necessary professional expertise, credentials, and resources to undertake the proposed contract.

3. It is hereby the policy of the State of New Jersey that any contracts or agreements with any engineering, architectural, or similar professional firm shall be awarded on the basis of open and fair competition, in accordance with the procedures set forth in the State Treasurer's report to me dated May 3, 1993. In particular, the State Treasurer shall establish procedures, applicable to all departments and authorities, for selecting qualified engineering, architectural, and other professional services through a process of sealed bidding or fee competition.

4. All authorities which are by law required to submit their minutes, resolutions, or actions to me for my approval or veto shall fully cooperate with the State Treasurer in the implementation of this Order, and shall promptly furnish him with any and all information which he may from time to time request.

5. The State Treasurer shall continuously monitor the implementation of this Order, and shall take care to solicit the views of the public and of the affected issuers. The Treasurer shall incorporate the views expressed by the public and the affected issuers insofar as such views are consistent with the letter and spirit of this Order.

Issued May 4, 1993.

EXECUTIVE ORDER No. 93

WHEREAS, Reorganization Plan No. 001 (1993) (hereinafter "the Plan") was submitted to the Senate and General Assembly on March 22, 1993; and

WHEREAS, Review of the Plan by the Legislature has produced certain comments and suggestions concerning any immediate or future implementation of the proposed transfer under the Plan from the Department of Corrections to the Department of Human Services of the New Jersey Training School for Boys and the Juvenile Medium Security Center and has also produced comments and suggestions for joint management of the aforesaid facilities by the aforesaid Departments, at least for a trial period; and

WHEREAS, I concur with those comments and suggestions and wish, by this Executive Order, to set them forth explicitly and to direct that they be pursued and executed should the Plan become effective.

NOW THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution of the State do hereby ORDER and DIRECT that, should the Plan become effective, the following shall become operational and shall both modify the Plan and its implementation:

1. Transfer under the Plan from the Department of Corrections to the Department of Human Services (hereinafter "DOC" and "DHS" respectively) of the New Jersey Training School for Boys and the Juvenile Medium Security Center (hereinafter "Jamesburg" and "Bordentown," respectively and "the facilities" collectively) shall not be implemented unless and until such a transfer is approved and further directed by either (1) legislation enacted by the Legislature and signed by the Governor or (2) a further Executive Order of the Governor approved by concurrent resolution of both houses of the Legislature or (3) a further Reorganization Plan submitted to the Legislature by the Governor and not disapproved by the Legislature.

2. (A) Unless and until transfer is implemented pursuant to Paragraph 1 hereof, Jamesburg and Bordentown shall be managed and administered as follows:

- (1) DOC shall be responsible for the day to day operation and management of the facilities and shall, through Corrections Officers and other DOC personnel, provide security for and at the facilities.

- (2) DOC shall continue to administer and provide the educational, remedial and/or rehabilitative programs which it presently

offers inmates at the facilities. DHS may supplement these programs by administering and providing other educational, remedial and/or rehabilitative programs for inmates at the facilities subject to and consistent with security and facility operational requirements and procedures established by DOC.

(3)DOC shall have the authority and responsibility to transfer inmates presenting security or disciplinary problems from the facilities to other secure juvenile or adult institutions. Aside from such security or disciplinary problems at the facilities, DHS shall have the authority and responsibility for the assignment of inmates to the facilities and/or the reassignment of inmates from the facilities to other institutions or facilities operated by the Division of Juvenile Services.

(4)DOC and DHS shall jointly be responsible for planning and overseeing any capital improvements (including security) at, and rehabilitation of, the facilities.

In this connection, I hereby further direct the Commissioners of DOC and DHS: to formulate and implement a plan for the physical rehabilitation of Jamesburg and for enhanced security there; and to take forthwith any and all immediate steps which may be necessary to ensure adequate security is in place at Jamesburg and to improve inmate living conditions.

(B)The Commissioners of DOC and DHS shall, by Memorandum or Memoranda of Understanding, develop and define operating procedures which will permit implementation of the directives contained in 2(A)(1), (2) and (3), above.

3. Furnishings, equipment, capital, personnel (including, without limitation, administrative and support staff) and other resources necessary to accomplish the arrangement and directives set forth in paragraph 2, above, shall be allocated between DOC and DHS as the Commissioners of DOC and DHS shall specify and agree by Memorandum of Understanding. The three (3) month time period within which employees are to make a choice of Department pursuant to Paragraph (A)(1)(J) of the Plan shall not begin to run for any employee remaining with DOC pursuant to said Memorandum of Understanding unless and until a transfer of facilities is accomplished pursuant to Paragraph 1 hereof.

4. Within three (3) months after the expiration of period one (1) year from and after the effective date of the Plan, the Jamesburg Board of Trustees and the Advisory Council on Juvenile

Justice created pursuant to the Plan shall, after consultation with the Commissioners of DOC and DHS, file a joint or several Report with the Legislature and with the Governor commenting upon and evaluating the operation of the facilities during the year of management hereunder and making recommendations for future management of the facilities.

5. This Order shall take effect immediately.

Issued May 7, 1993.

EXECUTIVE ORDER No. 94

WHEREAS, The Congress of the United States has found that there is a substantial need for enhanced and improved coordinated services to infants and toddlers with disabilities and has, pursuant to Pub.L.99-457, adopted a policy to provide financial assistance to states for developing and implementing a state-wide program to provide early intervention services for infants and toddlers with disabilities and their families; and

WHEREAS, The public interest of the citizens of the State of New Jersey requires that the State shall do all that is or may be required to secure for the State the benefits of federal appropriations for early intervention services under Pub.L.101-476, as amended; and

WHEREAS, The Act requires the establishment of a State Interagency Coordinating Council in order to qualify for federal funds; and

WHEREAS, Coordination and cooperation between the various State agencies can be enhanced by an advisory body that has representatives from the State agencies, providers, the Legislature and parents of children with disabilities; and

WHEREAS, Pursuant to L.1992, c.155, the Department of Health has been designated as the lead agency effective July 1, 1993;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 State Interagency Coordinating Council (hereinafter referred to as the State Council), which shall:

a. Advise and assist the designated lead agency for early intervention services for infants and toddlers with disabilities and their families in the performance of its responsibilities, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

b. Advise and assist the lead agency in the preparation of applications and amendments thereto;

c. Prepare and submit an annual report to the Governor and to the U.S. Secretary of Education on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State;

d. Advise and assist the Department of Education regarding the transition of toddlers with disabilities to preschool services to the extent such services are appropriate;

e. Advise and assist the lead agency in the development and implementation of the policies that constituted the Statewide system;

f. Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

g. Assist the lead agency in the effective implementation of the Statewide system by establishing a process that includes:

1) seeking information from service providers, service coordinators, parents, and others about any federal, State, or local policies that impede timely service delivery;

2) taking steps to ensure that any policy problems that impede timely service delivery are resolved; and

3) to the extent appropriate, assist the lead agency in the resolution of disputes.

2. The Council shall be composed of a minimum of fifteen, and maximum of twenty-five individuals appointed by the Governor who shall be broadly representative of the population of the State. These appointments shall ensure that:

a. At least 20 percent of the members are parents, including minority parents, of infants or toddlers with disabilities or children

with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one such member shall be a parent of an infant or toddler with a disability or a child with a disability aged six or younger.

b. At least 20 percent of the members are public or private providers of early intervention services.

c. At least one member is from the State Legislature.

d. At least one member is involved in personnel preparation.

e. At least one member is from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and has sufficient authority to engage in policy planning and implementation on behalf of such agencies.

f. At least one member is from the State educational agency responsible for preschool services to children with disabilities and has sufficient authority to engage in policy planning and implementation on behalf of such agency.

g. At least one member is from the agency responsible for the State governance of insurance, especially in the area of health insurance.

3. The Governor shall designate a member of the Council to serve as the chair and vice-chair of the Council. Any member of the Council who is a representative of the designated lead agency for early intervention services shall serve as a non-voting member and may not serve as the chairperson of the Council.

4. The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and to the extent appropriate, open and accessible to the general public. Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use federal funds made available to it to provide these services.

5. The State Council may draw upon the assistance of the employees of the Department of Health, Department of Education, Department of Human Services and of any other department, organization or agency of the State which may be available to it for these purposes.

6. Subject to the availability of appropriations, the State Council may adopt a budget and expend funds as permitted by federal law.

7. No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

8. Except as provided by federal law, Council members shall serve without compensation.

9. This Order shall take effect immediately.

Issued May 21, 1993.

EXECUTIVE ORDER No. 95

WHEREAS, Since 1974 the New Jersey Executive Commission on Ethical Standards has had definitive rules for the establishment of blind trusts by State officers and employees; and

WHEREAS, Executive Order No. 1 (January 18, 1990) and Executive Order No. 9 (April 18, 1990) established strict financial disclosure requirements for public officers and employees of the State of New Jersey; and

WHEREAS, There is a need to continually evaluate existing standards in order to make them more responsive to the citizens we represent; and

WHEREAS, The highest possible level of disclosure is necessary in order to maintain the public's faith that their government is acting in the best interest of the citizenry; and

WHEREAS, Such disclosure should allow the public to have knowledge of the assets and holdings of public officers and employees; and

WHEREAS, Ownership in any closely held corporation that does business with government entities can raise the appearance of a potential conflict of interest;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, do hereby ORDER and DIRECT:

I. Trusts

A. Blind trusts shall be eliminated in favor of full disclosure of assets by any regular State officer or employee (hereinafter "employee") or any special State officer or employee (hereinafter "officer"), see "Definitions," section V, *infra*, who is required by law or executive order to submit a financial disclosure statement to the Executive Commission on Ethical Standards.

B. After the date of this Order, no employee or officer who is required by law or executive order to submit financial disclosure statements to the Executive Commission on Ethical Standards ("Commission") shall maintain a blind trust. Furthermore, no such employee or officer shall establish a blind trust during that person's tenure.

C. The Commission shall immediately commence the process of terminating blind trusts held by any such employee or officer who is employed as of the date of this Order.

D. Any covered employee or officer who is employed as of the date of this Order shall forthwith notify the Commission as to the existence of a blind trust and the identity and address of the trustee. No later than June 30, 1993, the trustee shall advise the Commission of any and all assets held in such trust. The Commission shall review the assets and shall determine whether any such assets must be divested, consistent with the standards set forth in this Order. The Commission shall notify the trustee of its findings no later than August 15, 1993. The Commission shall afford the trustee 120 days after the date of notification to effectuate the orderly disposition of any such asset.

II. Interests in Closely Held Corporations or Similar Entities

A. No employee of a State agency who is required by law or executive order to submit financial disclosure statements to the Commission shall be permitted to retain any interest in any closely held corporation, partnership, sole proprietorship, or similar business entity doing business with any federal, state, interstate, or local government entity, except as provided in subsection 3 below.

1. Any such employee who is employed as of the date of this Order, and who retains any interest in any closely held corporation, partnership, sole proprietorship, or similar business entity

doing business with any federal, state, interstate, or local government entity, shall notify the Commission as to his or her interest, and his or her spouse's interest, in such a business entity no later than June 30, 1993. The Commission shall review this disclosure statement to determine whether the business entities in which the employee has an interest are engaged in government-related business within the meaning of this Order, and whether the holdings are in compliance with the Conflicts of Interest Law and this Order. No later than August 15, 1993, the Commission shall notify the employee of its findings. The employee shall be afforded 120 days after the date of notification to effectuate the orderly disposition of any asset, or to demonstrate to the Commission that the business entity has ceased to do business with a government entity in a manner prohibited by this Order.

2. After the issuance of this Order, no State agency shall employ any person in a covered position who at the time of employment holds any interest in any closely held corporation, partnership, sole proprietorship, or similar business entity doing business with any federal, state, interstate, or local government entity, except as provided in subsection 3 below. No individual seeking employment in such a position shall divest a covered asset in a manner otherwise prohibited by this Order for the purpose of satisfying the provisions of this Order. Furthermore, no covered employee shall obtain any prohibited interest in a business entity during the employee's tenure.

3. The provisions of this subsection shall not apply to any purchase, sale, contract, or agreement with any government entity, other than a State agency, which is made or awarded after public notice and competitive bidding as provided by the Local Government Contracts Law, N.J.S.A.40A:11-1 et seq., or such similar provisions contained in the public bidding laws or regulations applicable to any government entity in this State or any other jurisdiction, provided that any such purchase, contract, agreement, or sale, including a change in orders and amendments thereto, shall receive the prior approval of the Commission. The provisions do apply where the purchase, sale, contract, or agreement is authorized by any of the exceptions (e.g., professional or technical services, emergent matters, and unique compatibility) provided by the Local Government Contracts Law, N.J.S.A. 40A:11-1 et seq., or such similar provisions contained in the public bidding laws or regulations of any other jurisdiction.

B. No employee or officer who is required by law or executive order to submit a financial disclosure statement to the Commission shall retain any interest in any closely held corporation, partnership, sole proprietorship, or similar business entity unless the Commission shall have first determined that the employee or officer may retain such an interest in such business entity.

1. Each covered employee or officer who is employed or appointed as of the date of this Order shall notify the Commission as to his or her interest, and his or her spouse's interest, in any such business entity no later than June 30, 1993. The Commission shall review the disclosure statement and shall determine whether the employee or officer may retain such interest in the business entity consistent with the standards set forth in the Conflicts of Interest Law and this Order. The Commission shall notify the employee or officer of its findings no later than August 15, 1993. The employee or officer shall be afforded 120 days after the date of notification to effectuate the orderly disposition of any asset or to demonstrate that the business entity has ceased the business activity in question.

2. After the issuance of this Order, no State agency shall employ or appoint any employee or officer to a covered position if such person holds any interest in any closely held corporation, partnership, sole proprietorship, or similar business entity, unless the Commission has reviewed such interest and determined that the employee or officer may retain such an interest. A person seeking such employment or appointment shall disclose to the Commission his or her interest, and his or her spouse's interest, in any such business entity as soon as practicable, and the Commission shall render a determination no later than thirty days after receiving such disclosure, or at its next regularly scheduled meeting. No individual seeking employment or appointment to such a position shall divest a covered asset in a manner otherwise prohibited by this Order for the purpose of satisfying the provisions of this Order.

III. Ongoing Review by the Commission

A. The Commission shall review all financial disclosure statements as they may from time to time be submitted by covered employees and officers to determine whether the covered persons have obtained ownership or interest in any assets that give rise to a present or potential conflict of interest, or a present or potential appearance of a conflict of interest, within the meaning of this Order.

B. Each covered employee or officer shall amend his or her financial disclosure statement within thirty days of gaining knowledge of

(a) his or her, or his or her spouse's acquisition of any interest in any closely held corporation, partnership, sole proprietorship, or similar business entity; or (b) the commencement of any business activity covered by the provisions of this Order and as determined by the Commission, including, for example, a change in business plan authorizing business activity with a federal, state, interstate, or local government entity, by a business in which the employee or the employee's spouse has an interest covered by this Order.

C. Any employee or officer subject to this Order who acquires an interest prohibited under this Order by way of inheritance, bequest, or similar circumstance beyond his or her control shall follow the procedures for disclosure and disposition set forth in Section II of this Order.

IV. Limitations on Divestiture

A. All required divestitures shall be subject to the following conditions:

1. Divestiture must occur within the time periods prescribed above.
2. Ownership or control of the asset may not be transferred to a member of the employee's or officer's immediate family (see "Definitions," section V, *infra*).
3. The terms and conditions of any conveyance of ownership and control of the asset shall not contain any provisions regarding the return of the asset to the employee or officer subsequent to his or her State service.

V. Definitions

A. For the purpose of this Order:

1. "Member of the immediate family" shall mean a spouse, child, parent, or sibling residing in the same household.
2. "Asset" shall mean property of any kind, real and personal, tangible and intangible, having a value greater than \$1,000.
3. "Interest" in a closely held corporation, partnership, sole proprietorship, or similar business entity shall mean any ownership or control of any profits or assets of such business entity.
4. "Doing business" with any federal, state, or local government entity shall mean business or commercial transactions involving the sale, conveyance, or rental of any goods or services, and shall not include such activities as compliance with regulatory procedures.
5. "Regular State employee" shall have the same meaning as "State officer or employee" as set forth at N.J.S.A.52:13D-13b, and

“special State officer” shall have the same meaning as “Special State officer or employee” as set forth at N.J.S.A.52:13D-13e.

6. “State agency” shall mean any of the principal departments of State government and any entity allocated therein in conformance with N.J. Const. (1947), Art. V, §IV, para. 1.

VI. Sanctions and Effective Date

A. The failure of an employee or officer to comply with the provisions of this Order shall constitute good cause for his or her removal from employment or office.

B. This Order shall take effect immediately.

Issued June 10, 1993.

EXECUTIVE ORDER No. 96

WHEREAS, Mildred Barry Garvin zealously served the citizens of Essex County as the first African American on the East Orange Board of Education, rising to be president of that body; and

WHEREAS, She was also the first African American to serve on the East Orange Public Library’s Board of Directors, holding the post of Secretary/Treasurer; and

WHEREAS, She moved on to serve in the General Assembly from 1967-77, chairing the Education Committee; and

WHEREAS, Her commitment to education remained steadfast throughout her career serving Rutgers University as Director of Special Projects and Internships in the Department of Public Administration; and

WHEREAS, She received numerous awards, citations, and testimonials honoring her entrepreneurial spirit and dedication, including the State Family Planning Legislator’s Recognition Award in 1985, the Mary Senatore Award from the Essex County Federation of Democratic Women, the Community Service Award from the Oranges and Maplewood Branch of the NAACP, and an Exemplary State Officials Award from the Morris County Chapter of the Association of Black Educators; and

WHEREAS, Her inspiring career was crowned in 1991 when she was sworn in as President of the NAACP of the Oranges and Maplewood; and

WHEREAS, It is fitting and appropriate for the State of New Jersey to mark the passing of Mildred Barry Garvin, a standard bearer and public servant;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, 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 beginning on Tuesday, June 15, 1993, through and including Wednesday, June 16, 1993 in recognition and mourning of the passing of a distinguished legislator and New Jersey citizen, Mildred Barry Garvin.

2. This Order shall take effect immediately.

Issued June 15, 1993.

EXECUTIVE ORDER No. 97

WHEREAS, One of the most important objectives of government is to promote public confidence in its integrity and effectiveness; and

WHEREAS, To that end, we must examine the regulatory process to ensure that it is efficient, sensible, and open to the greatest possible degree of public participation; and

WHEREAS, When a regulatory system works well, it provides government with an invaluable opportunity to engage in a meaningful and productive dialogue with the people, and should create a partnership between the government and its citizens; and

WHEREAS, We must guarantee the people of this State greater access to, and greater participation in the rulemaking process; and

WHEREAS, We must work harder to create a regulatory system that carries out the mandates of the law more effectively and at the same time reduces delay and minimizes burdens for our citizens; and

WHEREAS, We must be willing to continually improve the regulatory system, to ensure that it promotes economic development in this State; and

WHEREAS, It is always appropriate to consider revisions to the system, in order to guarantee a system that adapts to changing times and modern challenges; and

WHEREAS, Improvements to the regulatory system should not be accomplished by adding new layers of bureaucracy or increasing the size of government; and

WHEREAS, In 1978, Governor Brendan Byrne issued Executive Order No. 66, which required all future regulations to expire no later than five years after adoption; and

WHEREAS, Although this action has worked well to improve the regulatory environment in New Jersey, we must continue to build upon these improvements and consider new actions to carry out the goals articulated in Executive Order No. 66;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 direct my Chief Counsel to conduct a comprehensive review of the State's regulatory system, and to present me with recommendations for improvement no later than October 1, 1993. He shall be authorized to provide interim reports.

2. In preparing these recommendations, the Chief Counsel shall convene an Advisory Panel, composed of members to be designated by him, but which shall, at a minimum, be composed of representatives of the private sector, members of the Legislature, other Cabinet Members, and the Director of the Office of Administrative Law. In addition, the Chief Counsel shall consult with the Governor's Management Review Commission as he may deem appropriate. The Chief

Counsel shall serve as the Chairman of this Advisory Panel, and shall meet with the Panel in a time and manner he deems most appropriate.

3. The Chief Counsel, in consultation with the Advisory Panel, shall prepare a final report setting forth recommendations for improving the State's regulatory system in a manner designed to maximize efficiency, eliminate duplicative and inconsistent regulations, and provide the greatest degree of effective public participation in the rulemaking process. In particular, the Chief Counsel shall consider the following issues, as well as others he deems relevant:

a. The Chief Counsel shall consider appropriate mechanisms for maximizing public access and participation in the rulemaking process, including:

- (1) mandating public hearings under certain circumstances;
- (2) improving current provisions allowing members of the public to initiate proceedings for the promulgation, repeal or modification of regulations;
- (3) providing opportunities prior to formal proposal for members of the public to comment on regulatory issues; and
- (4) improving the current notice requirements for proposed rules to ensure that interested members of the public are made aware of rule proposals.

b. The Chief Counsel shall consider the feasibility of instituting a process of ongoing review of all regulations to eliminate outdated, unnecessary, or duplicative regulations.

c. The Chief Counsel shall examine ways to ensure that rule-making proposals provide full and fair disclosure which can be easily understood by members of the public.

d. The Chief Counsel shall evaluate procedures for expediting the rulemaking process where appropriate.

e. The Chief Counsel shall examine the scope and effectiveness of Executive Order No. 66 (Byrne) to determine if the sunset requirements set forth therein should be revised or expanded.

f. The Chief Counsel shall review the designation and role of Administrative Practice Officers and make recommendations for changes that would enhance the regulatory process.

g. The Chief Counsel shall make recommendations on how the Office of Administrative Law can most efficiently and effectively review regulations submitted to it for publication.

4. In a manner to be determined by the Chief Counsel, every State department, authority, or instrumentality with rulemaking authority

shall forthwith commence a review of the regulatory process in its current form within that department, authority, or instrumentality, and shall recommend changes to the regulatory process.

5. Every State department, authority, and instrumentality of the State of New Jersey shall provide the Chief Counsel and the Advisory Panel with all assistance and cooperation in the implementation of this Order.

6. This Order shall take effect immediately.

Issued August 2, 1993.

EXECUTIVE ORDER No. 98

WHEREAS, Francisco Baez, a 29-year old resident of Landisville, was tragically killed in a traffic accident on August 10, 1993; and

WHEREAS, Mr. Baez has been a dedicated employee of the Department of Transportation since 1984; and

WHEREAS, It is proper and fitting for the State of New Jersey to honor the memory of Mr. Baez, and to convey our deepest condolences to his family on this tragic occasion;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, 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 beginning on Thursday, August 12, 1993 and through and including Friday, August 13, 1993 in recognition and mourning of the passing of Francisco Baez.

2. This order shall take effect immediately.

Issued August 11, 1993.

EXECUTIVE ORDER No. 99

WHEREAS, The United States Supreme Court recently held in the Boston Harbor case that state and local governments are permitted under the National Labor Relations Act to enforce project agreements when the government contracting unit acts as a market participant; and

WHEREAS, The Supreme Court commented in that case that the use of project agreements “exemplifies” the purposes of the National Labor Relations Act; and

WHEREAS, New Jersey has a compelling interest in carrying out public works projects at the lowest reasonable cost and the highest degree of quality; and

WHEREAS, New Jersey must ensure that labor disputes are resolved without the disruptions of strikes, lockouts, or slowdowns; and

WHEREAS, Project agreements provide legally enforceable guarantees that projects will be carried out in an orderly and timely manner, without strikes, lockouts, or slowdowns; and

WHEREAS, Project agreements also provide for peaceful, orderly, and mutually binding procedures for resolving labor issues; and

WHEREAS, The State also has a compelling interest in guaranteeing that public works projects meet the highest standards of safety and quality; and

WHEREAS, A highly skilled workforce ensures lower costs over the lifetime of the completed project for repairs and maintenance; and

WHEREAS, Project agreements provide the State with a guarantee that public works projects will be completed with highly skilled workers; and

WHEREAS, Project agreements allow public agencies to more accurately predict the actual cost of the project; and

WHEREAS, Project agreements facilitate integrated work schedules among different trades on a project site; and

WHEREAS, Project agreements also promote harmonious and productive work environments; and

WHEREAS, New Jersey can best accomplish these goals by encouraging agreements between contractors and subcontractors who perform work on State public works projects and the appropriate building and construction trade unions concerning important issues of employment, such as work hours, starting times, overtime rates, and procedures for resolving disputes; and

WHEREAS, Project agreements, therefore, advance the interests of efficiency, quality, and timeliness;

NOW, THEREFORE, I, JIM FLORIO, 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. It is hereby the policy of the State of New Jersey that public works projects implemented by any State department, authority, or instrumentality be subject to a project agreement whenever feasible and whenever such agreement substantially advances the interests of costs, efficiency, quality, safety, timeliness and the State's policy regarding minority- and women-owned businesses as set forth in Executive Order No. 84.

2. Every State department, authority, or instrumentality authorized to implement a public works project shall ensure that public works projects, whenever possible, be implemented subject to a project agreement with the applicable building and construction trade union in whose jurisdiction the work is to be performed.

3. In accordance with this Order, a State department, authority, or instrumentality responsible for implementing a public works project shall either (a) in good faith negotiate a project agreement directly with the applicable building and construction trade union or council in whose jurisdiction the project is to be performed, or (b) condition the award of a contract with a project manager or general contractor upon an agreement by the project manager or general contractor to in good faith negotiate a project agreement with the applicable building and construction trade union or council in whose jurisdiction the project is to be performed.

4. Any project agreement reached pursuant to this Order:
- (a) shall advance the interests of the State of New Jersey including the interests in cost, efficiency, quality, timeliness, and safety;
 - (b) shall contain guarantees against strikes, lock-outs, or other similar actions;
 - (c) shall set forth effective, immediate, and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work; and
 - (d) shall be made binding on all contractors and subcontractors on the public works project through the inclusion of appropriate bid specifications in all relevant bid documents.

5. In addition, any project agreement made pursuant to this Order shall fully conform to any and all statutes, regulations, and executive orders, including Executive Order No. 84, regarding the implementation of set-aside goals for women- and minority-owned businesses. Moreover, the obligation to comply with Executive Order No. 84 shall be expressly provided in the project agreement.

6. This Order shall take effect immediately and be implemented as soon as practicable in consideration and application of the criteria and policies declared herein.

Issued September 13, 1993.

EXECUTIVE ORDER No. 100

WHEREAS, It is fitting and appropriate to honor the memory and mourn the passing of Senator John E. Dimon; and

WHEREAS, Born in Roebling, New Jersey in 1916, Senator Dimon devoted his life to serving his community, his State, and his country; and

WHEREAS, Enlisting in the U.S. Army in 1940, Senator Dimon served his country with honor and distinction during the duration of this nation's involvement in World War II; and

WHEREAS, After the War, Senator Dimon devoted his legal career to public service, serving as Special Assistant Attorney General, Burlington County Public Guardian for Incompetent Veterans, and a member of the Burlington County Bridge Commission; and

WHEREAS, Senator Dimon also served as a highly distinguished member of the New Jersey Racing Commission; and

WHEREAS, As a member of the Racing Commission, Senator Dimon demonstrated a total commitment to the preservation and advancement of the racing industry in New Jersey; and

WHEREAS, In 1991, Senator Dimon joined the New Jersey State Senate, in which he served with great ability and commitment; and

WHEREAS, It is with deep sadness that we mourn the loss of Senator Dimon, and extend our sincerest sympathies to his family and friends;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, 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 beginning on Tuesday, September 21, 1993 and through and including Friday, September 24, 1993 in recognition and mourning of the passing of Senator John E. Dimon.

2. This Order shall take effect immediately.

Issued September 21, 1993.

EXECUTIVE ORDER No. 101

WHEREAS, On January 21, 1992 the State of New Jersey passed the most comprehensive welfare reform legislation in the history of the State called the Family Development Program (N.J.S.A.44:10-19 et seq.) which serves as a model for reform of the welfare system nationwide; and

WHEREAS, The Family Development Program was first initiated as a pilot program in three pilot counties: Camden, Essex and Hudson; and

WHEREAS, On July 1, 1993 the Family Development Program was expanded to include Passaic, Union, Mercer, Cumberland and Atlantic counties; and

WHEREAS, Full State implementation of the Family Development Program should be realized by Fiscal Year 1995; and

WHEREAS, The problems of long-term and intergenerational welfare dependency have resulted in a continuation of poverty and lack of opportunity for welfare recipients to become economically self-sufficient; and

WHEREAS, A comprehensive approach is needed to remedy these complex problems; and

WHEREAS, The Family Development Program is based on the principles that education is the key to self-sufficiency and that all able-bodied welfare recipients should have the same opportunities and responsibilities to become economically self-sufficient as anyone else in our society; and

WHEREAS, This program greatly expands current education, training and employment activities for welfare recipients and moves beyond the federal Jobs Opportunities and Basic Skills (JOBS) legislation by setting a new direction of individual responsibility, family stability, and self-sufficiency; and

WHEREAS, The Family Development Program provides a full range of services to comprehensively meet the recipients' needs, including case management, enhanced job training and education, job search assistance, extended Medicaid coverage, child care services and other supportive services; and

WHEREAS, The success of the Family Development Program is dependent upon the level of support that the Division of Family Development in the Department of Human Services receives from other State agencies in the implementation and institutionalization of change in the delivery of services at the local level; and

WHEREAS, Empowering families under the Family Development Program requires a new paradigm in deployment of resources from a wide range of governmental departments and agencies at the federal, State, county and local levels; and

WHEREAS, Coordination and collaboration across multiple service delivery systems is inherently difficult, requiring a serious and sustained commitment of senior agency leadership; and

WHEREAS, Limited budgetary resources and multiple funding streams, including those of a categorical nature, create barriers in accessing essential services and therefore require innovative and creative strategies for program coordination; and

WHEREAS, The future expansion of the Family Development Program from three pilot counties to Statewide implementation will require greatly enhanced communication and coordination of agencies at the State, county, and local levels;

NOW, THEREFORE, I, JIM FLORIO, 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 Governor's Committee on Welfare Reform (hereinafter referred to as "the Committee").

2. The Committee shall:

a. within 90 days of the date of this Executive Order, develop a plan to coordinate and direct State resources and the efforts of each State department toward efficiently achieving the welfare reforms of the Family Development Program;

b. within 90 days of the date of this Executive Order, complete an action plan to reflect the manner in which appropriate State resources and efforts from the State Departments of Education, Labor, Health, Community Affairs, Commerce, Environmental Protection and Energy, Transportation, and Higher Education shall be directed toward the Statewide implementation of the welfare reform initiative;

c. within 12 months from the date of this Executive Order, report back to the Legislature and to the Governor on the progress of implementation of its plan, which shall coincide with N.J.S.A. 44:10-32, which requires an annual report to the Governor and

Legislature on the Family Development Act, due July 1, 1995 and annually thereafter;

- d. advise the Governor on the plan to direct and coordinate the resources and efforts of agencies at the State, county, and local levels;
- e. assess the delivery of services provided by the Family Development Program to families and individuals receiving welfare benefits in order to identify emergent needs and recommend ways to improve the quality and efficiency of these services;
- f. reasonably carry out all other duties as necessary to ensure the successful implementation of the Family Development Program; and
- g. provide other information as the Governor may request.

3. The composition of the Committee shall consist of no more than twenty members appointed by the Governor. The Committee shall include the Commissioners of the following State departments: Community Affairs, Commerce, Education, Environmental Protection and Energy, Health, Human Services, Labor and Higher Education. In the event a Commissioner is unable to attend a Committee meeting, the Commissioner shall send a designee empowered to make policy decisions and decisions regarding the use of that department's resources to ensure the successful implementation of the Family Development Program.

4. The Committee shall also be comprised of at least one (1) Aid to Families with Dependent Children (AFDC) recipient who is currently receiving services from the Family Development Program. The Committee shall also consist of at least one (1) General Assistance (GA) recipient who is currently receiving services from the Family Development Program.

5. The Committee shall also be comprised of three (3) directors of Family Development Centers (one each from the northern, central and southern regions of the State). The three directors shall be selected by the Commissioner of Human Services to serve on the Committee. The three directors shall serve as ex officio, nonvoting members.

6. The Committee may also be comprised of:
- (a.) other representatives from the Family Development Centers;
 - (b.) advocates of and for individuals receiving services through the Family Development Program;
 - (c.) representatives from private sector businesses;

- (d.) representatives from providers and organizations that provide services to individuals participating in the Family Development Program; and
- (e.) other appropriate individuals.

7. Committee members shall serve for terms of two (2) years. Committee vacancies from among the members shall be filled by appointment by the Governor for the remainder of the unexpired term. No member of the Committee can serve more than one (1) consecutive full term. Any vacancy occurring in the membership of the Committee is to be filled in the same manner as an original appointment and the vacancy is not to affect the power of the remaining members to execute the duties of the Committee.

8. The Governor shall designate the Commissioner of the Department of Human Services to serve as the Chairperson of the Committee and the Commissioner of the Department of Education to serve as the Vice Chairperson of the Committee.

9. The Committee shall further organize itself and set its own schedule for meetings as it deems necessary to complete its work.

10. The Committee is authorized to hold such hearings and forums as the Committee may determine to be necessary to carry out the duties of the Council.

11. In performing its work, the Committee shall work with other existing agencies, bodies, and providers in the State designed to plan, coordinate and deliver services to individuals participating in the Family Development Program. The Committee may also draw upon the assistance of any department, organization or agency of the State which may be made available to it for these purposes.

12. This Order shall take effect immediately.

Issued September 24, 1993.

EXECUTIVE ORDER No. 102

WHEREAS, On March 14, 1983, the Governor's Committee on Children's Services Planning was created by Executive Order No. 35 (Kean) in order to make recommendations to improve the quality of services for the children and youth of this State; and

WHEREAS, In January 1993, I created a Cabinet Task Force on Children and Families in order to promote interagency coordination in the development of children's policy; and

WHEREAS, The composition and work of the Governor's Committee on Children's Services Planning should be adjusted to better coordinate its functions with those of the Cabinet Task Force on Children and Families in order to further promote interagency coordination in the development of children's policy and systemic initiatives that would more effectively and efficiently serve youth and their families; and

WHEREAS, With its revised membership and charge, the Governor's Committee on Children's Services Planning should become an even more valuable source of public input and should be able to contribute more effectively toward interagency coordination in promoting the healthy development of our children;

NOW, THEREFORE, I, JAMES J. FLORIO, 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. 35 (Kean) is hereby rescinded.**
- 2. There is hereby established the Governor's Committee on Children's Services Planning (hereinafter referred to as the Committee), which shall:**
 - a. Annually, on or before September 1, submit formal recommendations to the Cabinet Task Force on Children and Families (hereinafter referred to as the Cabinet Task Force), and the Governor regarding priorities for the State budget for the next fiscal year.**
 - b. Advise the Governor, the Cabinet Task Force and FamilyNet on the coordination of children's services.**
 - c. Research successful strategies to promote the healthy development of our children and share its findings with the Cabinet Task Force and the Governor.**
 - d. Assess the delivery of services to children and families in the State in order to identify emergent needs and recommend ways to improve the quality and efficiency of these services.**
 - e. Issue an annual report on the condition of children in New Jersey.**
 - f. Provide other information on children's services as the Governor may request.**

3. The Committee shall be composed of twenty-five individuals appointed by the Governor from among persons who have distinguished records in serving youth and their families and who represent a broad range of community institutions and services.

a. Members shall serve for terms of four years, except that, of the initial appointees pursuant to this Executive Order, six of the members shall serve for terms of one year; six of the members shall serve for terms of two years; six of the members shall serve for terms of three years; and the remaining members shall serve for terms of four years.

b. Any individual appointed to fill an unexpired term shall serve for the unexpired portion of the term.

4. The Governor shall designate two members of the Committee to serve as co-chairs. The Committee may further organize itself in any manner it deems appropriate and enact by-laws as deemed necessary to carry forth the responsibilities of the Committee.

5. The Committee shall set its own schedule for meetings as it deems necessary to complete its work but shall meet with the chair of the Cabinet Task Force at least once a year and shall meet with the members of FamilyNet at least four times a year.

6. In performing its work, the Committee shall work with other existing bodies in the State designed to coordinate children's policy, including but not limited to the Cabinet Task Force and FamilyNet. The Committee may draw upon the assistance of any department, agency or instrumentality of the State which may be made available to it for these purposes.

7. This Order shall take effect immediately.

Issued September 24, 1993.

EXECUTIVE ORDER No. 103

WHEREAS, Pursuant to the Rehabilitation Act of 1973, as amended by the Rehabilitation Amendments of 1992 (hereinafter referred to as the "Amendments of 1992"), enacted on October 29, 1992, and known as Pub.L.102-569, the State of New Jersey is mandated to establish a State Rehabilitation Advisory Council (hereinafter referred to as "the Council") composed of concerned citizens with disabilities; and

WHEREAS, Pursuant to the Rehabilitation Act of 1973 as amended by the Amendments of 1992, the Council is to be consumer-controlled so as to provide individuals with disabilities a stronger and more substantive role in shaping the programs and services established to support their employment goals and aspirations; and

WHEREAS, Pursuant to the Rehabilitation Act as amended by the Amendments of 1992, the Council must be in place in order for the State of New Jersey to receive federal funds under Title I, Section 105(a), Parts B and C of Pub.L.102-569, for the Vocational Rehabilitation, Client Assistance, and Expansion Programs; and

WHEREAS, Pursuant to the Rehabilitation Act of 1973 as amended by the Amendments of 1992, the State of New Jersey shall establish the New Jersey Commission for the Blind and Visually Impaired Rehabilitation Advisory Council to carry out the duties set forth in Title I, Part A, Sections 101(a)(36) and 105 of Pub.L.102-569;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 New Jersey Statewide Consumer Advisory Board of the Commission for the Blind and Visually Impaired is hereby reconstituted and redennominated the New Jersey Commission for the Blind and Visually Impaired Rehabilitation Advisory Council (hereinafter referred to as "the Advisory Council").

2. Pursuant to Title I, Part A, sections 101(a)(36) and 105 of Pub.L.102-569, the reconstituted and redennominated Advisory Council shall be established as a separate entity apart from any State agency. The Advisory Council shall be established as a separate entity in, but not of, the New Jersey Department of Human Services.

3. The New Jersey Commission for the Blind and Visually Impaired shall be the designated State unit in New Jersey providing services to persons who are blind and visually impaired.

4. The Council shall consist of no more than 15 voting members appointed by the Governor. The composition of the Council shall reflect a majority of qualified persons with disabilities representing the interests of New Jersey's cross-disability population. All members, including those from the business, disability and advocacy communities, shall have knowledge of vocational rehabilitation concepts, programs, policies, and services.

5. The Director of the Commission for the Blind and Visually Impaired (hereinafter referred to as "CBVI") and two vocational rehabilitation counselors shall serve as ex-officio, nonvoting members on the Advisory Council.

6. The Advisory Council shall consist of:

- a. at least one representative from the Statewide Independent Living Council;
- b. at least one representative from a parent training and information center established under the Individuals with Disabilities Act, Title I, Section 631 of Pub.L.101-476;
- c. a representative from the Client Assistance Program;
- d. at least one representative of a community rehabilitation program service provider;
- e. four representatives of the business, industry, and labor sectors;
- f. at least one representative of a disability advocacy group representing individuals who are blind or visually impaired;
- g. at least one parent(s), relative(s), guardian(s), or authorized representatives of individuals with disabilities who have difficulty in representing themselves or are unable to do so due to their disabilities; and
- h. at least one current or former applicant for, or recipient of CBVI vocational rehabilitation services.

7. The Advisory Council members shall serve for terms of three (3) years, except for those first appointed, five shall serve for a term of one (1) year, five shall serve for a term of two (2) years, and the remainder shall serve for a term of three (3) years. Council vacancies from among the members shall be filled by appointment by the Governor for the remainder of the unexpired term. No member of the Advisory Council can serve more than two (2) consecutive full terms. Any vacancy occurring in the membership of the Council is to be filled in the same manner as an original appointment and the vacancy is not to affect the power

of the remaining members to execute the duties of the Advisory Council. The Advisory Council shall designate a member of the Council to serve as chairperson.

8. The Advisory Council shall:

a. review, analyze, and advise the CBVI regarding the performance of its responsibilities under Title I, Part A, Section 105(c) of Pub.L.102-569;

b. advise the CBVI on the development and implementation of the State plan for vocational rehabilitation services, the strategic plan and amendments to the plans, reports, needs assessments, and evaluations required by Title I, Part A, Section 101 of Pub.L. 102-569 and Part C, Section 121 of Pub.L.102-569;

c. conduct a review and analysis of the CBVI's overall effectiveness;

d. conduct a review of consumer satisfaction with:

(1) performance of functions by the CBVI and other public and private entities responsible for providing services to individuals with disabilities; and

(2) vocational rehabilitation services provided to individuals with disabilities by the CBVI and other public and private entities pursuant to the Rehabilitation Act of 1973 or through public or private sources.

e. prepare and submit an annual report to the Governor, the Commissioner of the Department of Human Services, the Executive Director of the CBVI, and the Commissioner of the Rehabilitation Services Administration on the status of vocational rehabilitation programs operated within the State, and make such report available to the public;

f. coordinate planning and training with other councils within the State, including the New Jersey Independent Living Council, the State Developmental Disabilities Planning Council, and the State Mental Health Planning Council;

g. provide for the coordination and the establishment of working relationships between the CBVI and the New Jersey Independent Living Council and Centers for Independent Living within the State;

h. supervise and evaluate staff and other personnel as may be necessary to carry out the functions of the Council; and

i. carry out all other duties set forth in Title I, Section 105 of Pub.L.102-569.

9. The Advisory Council shall further organize itself and set its own schedule for meetings as it deems necessary to complete its work.

10. The Advisory Council shall convene at least four (4) meetings a year. The Advisory Council is authorized to hold such hearings and forums as the Advisory Council may determine to be necessary to carry out the duties of the Advisory Council. Pursuant to Title I, Section 105(f) of Pub.L.102-569, public meetings are to be announced and open and accessible to the general public.

11. In performing its duties, the Advisory Council may consult with existing bodies in the State designed to plan, coordinate and deliver vocational rehabilitation services to persons with disabilities and their families at the State, county, and local levels. The Advisory Council may draw upon the assistance of any department, organization or agency of the State which may be available to it for these purposes.

12. Pursuant to Title I, Section 105(e) of Pub.L.102-569, no member of the Advisory Council may vote on any matter that would provide direct financial benefit to the member thereby creating a conflict of interest or otherwise give the appearance of a conflict of interest.

13. This Order shall take effect immediately.

Issued September 28, 1993.

EXECUTIVE ORDER No. 104

WHEREAS, The dwindling availability of natural marine animals for food is a consequence of modern harvesting technologies, pollution and disease, and dietary shifts toward non-meat protein foods has placed added focus and value on marine-harvested products; and

WHEREAS, The proximity to markets, the demand for healthful food products, available natural resources, adequate financing and educational resources provided by Rutgers, The State University, have been essential ingredients for the growth of agriculture in New Jersey; and

WHEREAS, These are equally important for the growth of aquaculture, which is the planting, nurturing, and harvesting of aquatic organisms; and

WHEREAS, The State of New Jersey has been committed, through programs such as "Jersey Fresh" and the FARMS Commission, to strengthening, expanding and diversifying agricultural activities in the State, and support for aquacultural development is integral to this mission; and

WHEREAS, The rapid and orderly expansion of aquaculture is constrained by a number of factors, including: lack of domestic broodstock; poor understanding of nutrition and diets of culturable species; need for improvement in fish health management; poor knowledge of water quality criteria in culture systems; a need for education, information, and technology transfer efforts, and; a need to understand markets and marketing barriers for aquaculture and other barriers faced by the aquaculture industry. These include the need to balance the interests and requirements of recreation, commercial, and aquacultural industries, legal and regulatory constraints, and difficulty in locating venture capital for the expansion of aquaculture; and

WHEREAS, The Fisheries and Aquaculture Technology Extension Center, sponsored by the Governor's New Jersey Commission on Science and Technology and housed at Rutgers, has access to expertise in aquaculture and fisheries, and its mission is to foster the orderly development of these industries;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 an Aquaculture Development Task Force to be organized by the Fisheries and Aquaculture Technology Extension Center, which shall provide or assemble the technical expertise necessary to draft the State Aquaculture Development Plan. The Task Force membership shall include the Secretary of Agriculture and the Commissioners of the Departments of Environmental Protection and Energy, Commerce and Economic Development, and Health, or their designees. The Task

Force shall be co-chaired by the Secretary of Agriculture and a person with expertise in the commercial fisheries and aquaculture business, to be selected by the members of the Task Force. The Task Force shall be housed at the Fisheries and Aquaculture Technology Extension Center.

2. The Task Force shall design the State Aquaculture Development Plan to provide for and encourage the development and subsequent expansion of an economically viable aquaculture industry while ensuring the integrity and protection of the natural/wild stocks and their habitat. The Fisheries and Aquaculture Technology Extension Center shall support the Task Force in developing the design of the State Aquaculture Development Plan.

3. The State Aquaculture Development Plan shall be designed to: stimulate private investment in the development and expansion of commercial aquaculture; evaluate job opportunities for individuals displaced from the fishing and shellfishing industries in the areas of research and development, and in new skilled jobs for technically trained aquaculturists; ensure coordination among State agencies to promote the goals of this Executive Order; enhance business diversity opportunities for New Jersey farmers and commercial fisherman, other interested entrepreneurs, and the fish and shellfish processing, marketing, and distribution industries; and develop mechanisms to ensure for the citizens of New Jersey and the Mid-Atlantic region a consistent supply of quality aquacultured products, such as a diversity of finfish, e.g. hybrid striped bass, and specialty varieties of bivalve shellfish products.

4. The State Aquaculture Development Plan should address the issues of water withdrawal, wastewater discharge, optimal habitat conditions for aquacultured products (both fresh and marine), product standards, natural resource protection, marketing, research and demonstration, farm pond utilization, coastal development, economic development, and extension/education. The Plan should also identify those activities already practiced commercially within the State and those aquaculture activities that have a good probability for development in the near future.

5. The New Jersey Aquaculture Development Task Force shall utilize the expertise of industry, academia and governmental agencies, and resources available from the New Jersey-Israel

Aquaculture Exchange Program, to design the State Aquaculture Development Plan.

6. The Departments of Agriculture, Environmental Protection and Energy, Commerce and Economic Development, and Health shall provide the Task Force with staff assistance in designing the State Aquaculture Development Plan.

7. The New Jersey Aquaculture Development Task Force shall issue a final report, including the State Aquaculture Development Plan and recommended legislation or regulation, to the Governor and the Governor's Commission on Science and Technology within one year of the date of this Order.

8. This Order shall take effect immediately.

Issued October 5, 1993.

EXECUTIVE ORDER No. 105

WHEREAS, Army Specialists Dominick M. Pilla, a 21-year-old resident of Vineland, Cumberland County, and Army Specialist James E. Smith, a 21-year-old resident of Washington Township, Monmouth County, were killed in battle on or about Sunday, October 3, 1993 in Mogadishu, Somalia; and

WHEREAS, Specialists Pilla and Smith were stationed in Somalia as part of the United Nations' humanitarian relief efforts; and

WHEREAS, The provision of assistance to the needy and the down-trodden exemplifies this country's highest ideals; and

WHEREAS, These valiant New Jersey residents, both of whom were Army Rangers assigned to Company B, 3rd Battalion, 75th Ranger Regiment, stationed in Fort Benning, Georgia, sacrificed their lives in the service of their country to preserve and foster this ideal; and

WHEREAS, It is proper, fitting and just for the citizens of the State of New Jersey to honor the memory of Army Specialists Pilla and Smith, and to convey our deepest condolences to their families on this tragic occasion;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes, 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 beginning on Thursday, October 7, 1993, and through and including Friday, October 8, 1993, in recognition and mourning of the passing of Army Specialists Dominick M. Pilla and James E. Smith.

2. This Order shall take effect immediately.

Issued October 6, 1993.

EXECUTIVE ORDER No. 106

WHEREAS, Pursuant to the Rehabilitation Act of 1973, as amended by the Rehabilitation Amendments of 1986 (hereinafter referred to as the "Amendments of 1986"), enacted on October 21, 1986, and known as Pub.L.102-569, the State of New Jersey was mandated to establish the New Jersey Independent Living Advisory Council in order to provide the necessary guidance for the development of a State plan to expand independent living services for persons with disabilities Statewide; and

WHEREAS, Pursuant to the Rehabilitation Act of 1973, as amended by the Rehabilitation Amendments of 1992 (hereinafter referred to as the "Amendments of 1992"), and known as Pub.L.102-569, the State of New Jersey is mandated to redenominate the New Jersey Independent Living Advisory Council to the New Jersey Independent Living Council and to ensure that the redenominated Council shall not be established as an entity within another State agency; and

WHEREAS, Pursuant to the Rehabilitation Act of 1973 as amended by the Amendments of 1992, in order to be eligible to receive federal financial assistance under Title VII, Section 704(a) of Pub.L.102-569, the State of New Jersey shall submit to the Commissioner of the Rehabilitation Services Administration, U.S. Department of Education, and obtain approval of, a State plan containing such provisions as the Commissioner may require, including, at a minimum, a plan that ensures the existence of appropriate planning, financial support and coordination, and other assistance to appropriately address, on a Statewide and comprehensive basis, needs in the State for (a) the provision of State independent living services, (b) the development and support of a Statewide network of centers for independent living, and (c) working relationships between programs providing independent living services and independent living centers, the vocational rehabilitation program established under Title I, Section 101 of Pub.L.102-569, and other programs providing services for individuals with disabilities; and

WHEREAS, With its revised name, membership, charge and responsibilities, the New Jersey Independent Living Council should promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities into the mainstream of American society;

NOW, THEREFORE, I, JIM FLORIO, 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 New Jersey Independent Living Advisory Council is hereby redennominated the New Jersey Independent Living Council (hereinafter referred to as "the Council"). The Council shall be established as a separate entity in, but not of, the New Jersey Department of Labor.

2. The Council shall:

(a) jointly develop and submit (in conjunction with the designated State agencies) the State plan required in Title VII, Part A, Section 704 of Pub.L.102-569;

(b) monitor, review, and evaluate the implementation of the State plan;

(c) coordinate activities with the State Rehabilitation Advisory Council established under Title I, Part A, Section 101(a) (3c) and Section 105 of Pub.L.102-569, that address the needs of specific disability populations and issues under other federal law;

(d) ensure that all regularly scheduled meetings of the Council are open to the public and that sufficient advance notice is provided;

(e) submit to the Commissioner of the Rehabilitation Services Administration, U.S. Department of Education such periodic reports as the Commissioner may request, and keep such records, and afford such access to such records, as the Commissioner finds necessary to verify such reports; and

(f) carry out all other duties set forth in Title VII, section 704 of Pub.L.102-569

3. The Council shall consist of no more than seventeen voting members appointed by the Governor. The composition of the Council shall reflect a majority of qualified persons with disabilities representing the interest of New Jersey's cross-disability population. The majority of the members appointed to the Council may not be employed by any State agency or center for independent living.

(a) A representative from the Division of Vocational Rehabilitation Services in the Department of Labor, and a representative from the New Jersey Commission for the Blind and Visually Impaired in the Department of Human Services (hereinafter referred to as the "designated State units") shall continue to serve as ex officio, nonvoting members on the Council.

(b) The Commissioners of the State departments of Human Services, Labor, Education, and the Public Advocate and/or their designees from the Division of Developmental Disabilities in the Department of Human Services, the Division of Mental Health and Hospitals in the Department of Human Services, the Division of the Deaf and Hard of Hearing in the Department of Human Services, the Division of Special Education in the Department of Education, and the Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate, shall also serve as ex officio, nonvoting members on the Council.

(c) Three directors of centers for independent living (one each from the northern, central and southern regions of the State) shall be selected by the members of the New Jersey Directors Association of Centers for Independent Living to serve on the Council.

(d) The Council shall also consist of:

(1) at least one parent or guardian of an individual with a disability; and

(2) one representative of the private sector business community;

(e) The Council may also be comprised of:

(1) other representatives from centers for independent living;

(2) advocates of and for individuals with disabilities;

(3) representatives from organizations that provide services for individuals with disabilities; and

(4) other appropriate individuals.

(f) Council members shall serve for terms of three (3) years, except for those first appointed, five shall serve for a term of one (1) year, five shall serve for a term of two (2) years, and the remainder shall serve for a term of three (3) years. Council vacancies from among the members shall be filled by appointment by the Governor for the remainder of the unexpired term. No member of the Council can serve more than two (2) consecutive full terms. Any vacancy occurring in the membership of the Council is to be filled in the same manner as an original appointment and the vacancy is not to affect the power of the remaining members to execute the duties of the Council. The Council shall designate a member of the Council to serve as the Chairperson.

4. The Council shall further organize itself and set its own schedule for meetings as it deems necessary to complete its work.

5. The Council is authorized to hold such hearings and forums as the Council may determine to be necessary to carry out the duties of the Council.

6. In performing its work, the Council shall work with other existing bodies in the State designed to plan, coordinate and deliver independent living services to persons with disabilities and their families at the State, county and local levels. The Council may draw upon the assistance of any department, organization or agency of the State which may be made available to it for these purposes.

7. The Council may use such resources to reimburse members of the Council for reasonable and necessary expenses of attending Council meetings and performing Council duties, and to pay compensation to a member of the Council, if such member is not

employed or must forfeit wages from other employment, for each day the member is engaged in performing Council duties.

8. Pursuant to Title VII, Section 705 (6) (e3) of Pub.L.102-569, while assisting the Council in carrying out its duties, staff and other personnel shall not be assigned duties by the designated State agencies or any other agency or office of the State, that would create a conflict of interest.

9. This Order shall take effect immediately.

Issued October 15, 1993.

EXECUTIVE ORDER No. 107

WHEREAS, New Jersey's economic vitality and the standard of living of its residents depend upon a highly skilled work force and globally competitive work places; and

WHEREAS, The State's economic development strategy relies upon increasing the skills of our work force; and

WHEREAS, The State of New Jersey has embarked on a strategic restructuring of its work force education and training as part of this economic development strategy; and

WHEREAS, The New Jersey Department of Labor and the State Employment and Training Commission have key roles to play in the development of New Jersey's work force readiness system; and

WHEREAS, The Federal "Job Training Partnership Act" (Pub.L.97-300, 29 U.S.C. §1532, hereinafter referred to as the JTPA) establishes a job training program that is currently a component of New Jersey's work force readiness system; and

WHEREAS, N.J.S.A.34:15C-1 et seq. creates in the Executive Branch and in, but not of, the Department of Labor, a State Employment and Training Commission (hereinafter referred to as the SETC) to design and help implement a unified work force readiness system for New Jersey, independent of any supervision or control by the department or any other board or officer thereof; and

WHEREAS, The duties of the State Job Training Coordinating Council pursuant to Section 122 of Title I of the JTPA (29 U.S.C. §1532) and Title III of that Act (29 U.S.C. §1651 et seq.) are assigned to the SETC by N.J.S.A.34:15C-6f.; and

WHEREAS, Funding for the State Job Training Coordinating Council is authorized by Section 202(b)(4) of the JTPA (29 U.S.C. §1602); and

WHEREAS, The execution of the Governor's responsibility under federal employment laws has historically been defined by Executive Order, beginning with Executive Order No. 5 (Byrne 1974) through all subsequent gubernatorial administrations, to the present;

NOW THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of the State of New Jersey, do hereby ORDER and DIRECT:

1. The Commissioner of Labor (hereinafter referred to as the Commissioner), is designated to act on behalf of the Governor in the planning, administration, coordination and oversight of programs under the JTPA and, to the extent not inconsistent with the JTPA or State law, shall have sole authority to apply for federal funds under the JTPA.

2. The Commissioner shall assure that the State is in compliance with the provisions of the JTPA and shall: provide for corrective actions when necessary; exercise the authority of the Governor in resolving disputes; establish planning and performance requirements; determine procedures for awarding incentive funds; and carry out such other responsibilities as specified or implied under the JTPA and its subsequent amendments.

3. The Chairman of the SETC is authorized to determine the budget necessary to carry out the SETC's responsibilities in performing the functions of the State Job Training Coordinating Council under the JTPA. The annual expenditure of an amount not to exceed twenty percent (20%) of the State's five percent (5%) administrative resources available to the Governor under the JTPA is hereby authorized.

4. Executive Orders Nos. 22 (1982), 81 (1984), 113 (1985), 119 (1985) and 188 (1988) issued by Governor Kean are hereby rescinded.

5. This Order shall take effect immediately.

Issued October 21, 1993.

EXECUTIVE ORDER No. 108

WHEREAS, The health of New Jersey women is at risk for conditions that could be detected by routine preventive care services; and

WHEREAS, The cost of these services is a major barrier to adequate care; and

WHEREAS, A large percentage of women have never had any of the basic preventive health care services, including Pap smears, clinical breast examinations, or complete physical examinations, which if undertaken would promote their long-term health; and

WHEREAS, Poor, less educated, and minority women are more likely to be uninsured and, thus, not receive necessary medical care; and

WHEREAS, The level of collaboration between New Jersey health care providers, community and corporate leaders, and consumers, as evidenced by the first New Jersey Women's Health Summit held on September 10, 1993, attests to the degree of concern that exists for women's health issues in New Jersey; and

WHEREAS, As we enter an era of health care reform at the State and federal level, public and private efforts that assure universal health insurance coverage for comprehensive benefits, including preventive services, are essential to removing financial barriers to quality health care for all women;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 Governor's Commission on Women's Health.

2. The Commission shall, within 12 months from the date of this Executive Order:

a. review and assess the system of delivery of health care services to women in New Jersey, and the costs of these services, in order to identify the needs of women and recommend ways to reduce costs and improve the quality and efficiency of these services;

b. prepare and submit a report to the Governor on the status of health care services for women in New Jersey, and make recommendations for policies and programs that will enhance the health and well-being of New Jersey's women, including recommended legislation or regulations.

3. The Commission shall consist of no more than 22 members appointed by the Governor. The Commission shall include the Commissioners of the following State departments: Community Affairs, Education, Health, Human Services, Insurance, Labor, and Law and Public Safety, or their designees. The remaining members shall be appointed by the Governor and shall include representatives of the medical, nursing, legal, education, social services and health care service agency communities.

4. The Commission members will serve without remuneration.

5. The Commissioner of Health will convene the Commission and the Department of Health shall provide the Commission with staff assistance.

6. The Governor shall designate the Chairperson and Vice Chairperson of the Commission from among the members of the Commission.

7. The Commission shall further organize itself and set its own schedule for meetings as it deems necessary to complete its work.

8. This Order shall take effect immediately.

Issued October 20, 1993.

EXECUTIVE ORDER No. 109

WHEREAS, The New Jersey Farmland Assessment program was created by the voters through a constitutional amendment in 1963 to reduce the economic impact of local property taxes on farming activities in New Jersey; and

WHEREAS, The Legislature enacted the Farmland Assessment Act of 1964 to implement and administer this constitutional provision; and

WHEREAS, These actions were prompted by a concern that the economic viability of the farming community, especially family-owned and family-operated farms, could be threatened by rapidly rising property taxes; and

WHEREAS, Agriculture is a unique industry that contributes income, employment, economic diversity and environmental benefits to improve the quality of life experienced by New Jersey citizens; and

WHEREAS, New Jersey farms rank in the top ten states nationally in production of cranberries, blueberries, peaches, tomatoes and nursery plants, and over eight thousand farms covering more than one million acres produce over 150 different JERSEY FRESH products, which are distributed to feed millions throughout the nation and worldwide; and

WHEREAS, The Farmland Assessment program has enormous importance for the State's economy and environment, since approximately one-quarter of all land in New Jersey has qualified for property tax treatment pursuant to this program; and

WHEREAS, The Farmland Assessment program has provided an economic benefit to landowners of land on which farming occurs, and provided financial incentives for the continuation of these farming operations; and

WHEREAS, The Farmland Assessment program, by exempting qualifying farmlands from normal property taxation rates, has altered the property tax base of New Jersey municipalities, while at the same time limiting the growth in demand for certain municipal services and infrastructure that could be triggered by increased development; and

WHEREAS, Almost thirty years have passed since the establishment of the Farmland Assessment program, a periodic review is needed to quantify and evaluate the uniformity, consistency and effectiveness in the interpretation, application and administration of Farmland Assessment requirements and procedures, and the overall impacts of this program on the State's economy and environment;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the New Jersey Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The creation of the Task Force for the Review of the Farmland Assessment Program (hereinafter "Task Force") to conduct a comprehensive review of the Farmland Assessment program. This Task Force shall perform the following tasks:

a. The Task Force shall gather financial and technical information on the Farmland Assessment program and quantify and analyze the effectiveness and impacts of the program. In particular, the Task Force shall study the following program impacts:

i. the economic impact in strengthening the viability and continued existence of the farming community in New Jersey, including shifts in farmland ownership patterns and farming practices;

ii. the financial impact of the program on the property tax base of New Jersey municipalities, including an analysis of both the program's effect on property tax revenues available to municipalities and the demand for municipal services and infrastructure that would otherwise result from more intensive development;

b. The Task Force shall identify possible options for revising requirements to qualify land for farmland assessment, and analyze the effectiveness and impacts of each option;

c. The Task Force shall evaluate the State, county and municipal administration of the program, and identify possible options for improving the administration of the program.

2. The Task Force, which shall be chaired by an individual selected by the Governor from among the public members, shall be constituted as follows:

a. the Secretary of the New Jersey Department of Agriculture, or his designee;

b. the Treasurer of the State of New Jersey, or his designee;

- c. the Commissioner of the Department of Environmental Protection and Energy, or her designee;
- d. the President of the New Jersey State Board of Agriculture, or the Vice President, if so designated by the President;
- e. the President of the New Jersey Farm Bureau;
- f. ten public members to be appointed by the Governor who shall broadly reflect an experience and interest in agriculture, taxation, environment, county and local government, economic development and such other areas which are appropriate to the work of the Task Force, provided, however, that at least five such members shall be individuals currently owning and/or operating a New Jersey farm.

3. The Department of Agriculture, the Treasury Department, the Department of Environmental Protection and Energy, the New Jersey Agricultural Experiment Station, and all other State departments and agencies are hereby directed to cooperate with the Task Force and to furnish it with any information, staffing support or other assistance as necessary to accomplish the purposes of this Order.

4. The Task Force shall provide a report of its analysis to the Governor no later than May 1, 1994.

5. This Order shall take effect immediately.

Issued October 25, 1993.

EXECUTIVE ORDER No. 110

WHEREAS, Pursuant to the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1992, enacted on October 29, 1992, and known as Public Law 102-569, the State of New Jersey is mandated to establish a State Rehabilitation Advisory Council composed of concerned citizens with disabilities, and is to be consumer-controlled so as to provide individuals with disabilities a stronger and more substantive role in shaping the programs and services established to support their employment goals and aspirations; and

WHEREAS, The Advisory Council must be in place in order for a state to receive Federal funds under Title I of the Act for the vocational rehabilitation and the client assistance programs under Part B, and the innovation and expansion program under Part C; and

WHEREAS, Pursuant to the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1992 enacted on October 29, 1992, and known as Public Law 102-569, the State of New Jersey shall name and establish the New Jersey Division of Vocational Rehabilitation Services Rehabilitation Advisory Council to carry out the duties set forth in Title I, Part A, Sections 101(a)(36) and 105 of Public Law 102-569;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 New Jersey Advisory Board for Vocational Rehabilitation of the Division of Vocational Rehabilitation Services shall hereby be reconstituted and henceforth be known as the New Jersey Division of Vocational Rehabilitation Services Rehabilitation Advisory Council, hereinafter referred to as the "Council." The Council shall be established as a separate entity, apart from any State agency, and this Council shall responsibly carry out the duties set forth in Title I, Part A, sections 101(a)(36) and 105 of Public Law 102-569. The Council shall be established as a separate entity in, but not of, the New Jersey Department of Labor.

2. The New Jersey Division of Vocational Rehabilitation Services in the Department of Labor, hereinafter referred to as the "Division," shall be the designated State unit in New Jersey providing vocational rehabilitation services to persons with disabilities, with the exception of those who are blind and visually impaired, pursuant to Title I section 105(a)(2) of the Rehabilitation Act Amendments of 1992.

3. The Council shall consist of no more than 23 members appointed by the Governor. The composition shall reflect a majority of qualified persons with disabilities representing the interest of New Jersey's cross-disabilities population. All members, including those from the business, disability, and advocacy

communities, shall have knowledge of vocational rehabilitation concepts, programs, policies, and services.

a. The Council shall consist of:

(1) A majority of individuals with disabilities, the majority are not to be employed by the designated State unit;

(2) At least one representative of the Statewide Independent Living Council;

(3) At least one representative of a parent training and information center established pursuant to section 631(c)(9) of the Individuals with Disabilities Act (20 U.S.C. §1431(c)(9));

(4) At least one representative of the Client Assistance Program;

(5) Vocational rehabilitation counselors with knowledge of and experience with vocational rehabilitation programs, who, if employed by the State agency, shall serve as ex officio, non-voting members of the Council;

(6) At least one representative of community rehabilitation program service providers;

(7) Four representatives of business, industry, and labor;

(8) Representatives of disability advocacy groups representing a cross section of individuals with disabilities, and parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty in or are unable to represent themselves due to their disabilities;

(9) Current or former applicants for, or recipients of Division vocational rehabilitation services; and

(10) The Director of the Division is to be an ex officio, non-voting member of the Council.

4. The Council members shall serve for a term of three (3) years, except for those first appointed, five shall serve for a term of one (1) year, five shall serve for a term of two (2) years, and the remainder shall serve for a term of three (3) years. Council vacancies from among the members shall be filled by appointment by the Governor or his designee for the remainder of the unexpired term.

a. Each member of the Council is to serve for a term of not more than three (3) years, except that:

b. A member appointed to fill a vacancy occurring prior to the expiration of a member's term is to be appointed for the remainder of the term;

c. The terms of service of the member initially appointed are to be set by the appointing authority so that expiration of terms will occur on a staggered basis;

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d. No member of the Council can serve more than two consecutive full terms;

e. Any vacancy occurring in the membership of the Council is to be filled in the same manner as an original appointment, and the vacancy is not to affect the power of the remaining members to execute the duties of the Council (Section 105(b)(6) and (7) of the Act); and

f. The Council shall designate the Chairperson of the Council.

5. The overall function of the Council is advisory in nature and specific functions identified in the Amendments include:

a. Review, analyze, and advise the Division regarding the performance of its responsibilities under Title I, particularly responsibilities relating to:

(1) Eligibility (including order of selection for services);

(2) Extent, scope, and effectiveness of services provided; and

(3) Functions performed by the Division that affect the ability of individuals with disabilities in achieving rehabilitation goals and objectives under Title I;

b. Advise the Division, and, at the discretion of the Division, assist in the preparation of applications, the State plan for vocational rehabilitation services, the strategic plan, and amendments to the plans; reports, needs assessments, and evaluations required by Title I;

c. Conduct, to the extent feasible, a review and analysis of the effectiveness of and consumer satisfaction with:

(1) The performance of functions of the Division and other public and private entities responsible for performing functions for individuals with disabilities; and

(2) Vocational rehabilitation services provided or paid for from funds made available under the Act or through other public or private entities responsible for providing vocational rehabilitation services to individuals with disabilities;

d. Prepare and submit an annual report to the Governor, the Commissioner of the Department of Labor, and Director of the Division on the status of vocational rehabilitation programs operated within the State, and make the report available to the public;

e. Coordinate with other councils within the State, including the Statewide Independent Living Council, the advisory panel established under section 613(a)(12) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council, and the State Mental Health Planning Council;

f. Advise the Division and provide for coordination and the establishment of working relationships between the Division and

the Statewide Independent Living Council and centers for independent living within the State; and

g. Perform such other functions consistent with the purpose of Title I, as the Council determines to be appropriate and that are comparable to the other functions performed by the Council (Section 105(c) of the Act).

6. The Council, in performing its duties, may consult with existing agencies in planning, coordination, and delivery of vocational rehabilitation services to persons with disabilities and their families at the State, county, and local levels.

7. No member of the Council is to vote on any matter that would provide direct financial benefit to the member or otherwise give the appearance of a conflict of interest under State law (Section 105(e) of the Act).

8. The Council, consistent with State law, is to supervise and evaluate staff and other personnel as may be necessary to carry out its functions. While assisting the Council in carrying out its responsibilities, staff and other personnel are not to be assigned duties by the Division or any other agency or office of the State that would create a conflict of interest.

9. The Council is to convene at least four meetings a year in such places as it determines to be necessary to conduct Council business. It may also convene forums or hearings as it determines appropriate and necessary to carry out its duties.

10. Public meetings are to be announced and open and accessible to the general public, unless there is a valid reason for an executive session (Section 105(f) of the Act).

11. This Order shall take effect immediately.

Issued October 29, 1993.

EXECUTIVE ORDER No. 111

WHEREAS, The citizens of the State of New Jersey have an inherent right to a healthy environment; and

WHEREAS, There is a direct relationship between the health of the environment and the level of environmental awareness among the State's citizenry; and

WHEREAS, Environmental education is an integral part of a complete educational experience for students at the elementary, secondary and post-secondary levels; and

WHEREAS, Environmental education should be an integral part of a lifelong learning process that involves both the formal education that occurs in school and the informal education that occurs in all walks of life; and

WHEREAS, The New Jersey Commission on Environmental Education was originally convened by former Governor Thomas Kean in 1989 pursuant to Executive Order No. 205; and

WHEREAS, The New Jersey Commission on Environmental Education was created to identify for the Governor the knowledge, attitudes, values, behaviors and skills that should be recommended for the development of an environmental education master plan; and

WHEREAS, The New Jersey Commission on Environmental Education has identified the knowledge, attitudes, values, skills and behaviors that an environmentally literate citizenry should acquire, and has codified a Plan of Action for developing such a citizenry through the implementation of a variety of strategies; and

WHEREAS, there exists a need to achieve the goals set forth in the Plan of Action developed by the Commission, thus warranting the reconvening of the Commission.

NOW, THEREFORE, I, JAMES J. FLORIO, 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 reconvened the New Jersey Commission on Environmental Education, which shall consist of 27 members, as follows:

A. Three public or private school teachers, one from each of the following groupings: grades kindergarten to third, grades fourth to sixth, and grades seventh to twelfth;

B. Two representatives of each of the following groups: academia in the fields of environmental education and/or environmental science; non-partisan, public interest groups; the field of environmental health; non-academic science professionals; the agricultural community; labor/industry; cultural institutions including, but not limited to, organizations such as museums and nature centers;

C. One representative of each of the following: clergy; school administration; a local school board; and a student representative (grade nine through undergraduate levels);

D. The Commissioners of the following State Departments, or their designees: Education; Higher Education; Environmental Protection and Energy; and Health; and

E. Also included are the Environmental Prosecutor, or a designee; and a representative from the Governor's Office.

The public members shall be appointed by the Governor for terms of three years, and in the first year the public members shall be appointed to staggered terms as follows:

- (1) Seven shall be appointed to terms of one year;
- (2) Seven shall be appointed to terms of two years; and
- (3) Seven shall be appointed to terms of three years.

The Governor shall appoint a chair to the Commission from among its membership, who shall serve in such position at the pleasure of the Governor.

2. The Commission shall meet quarterly throughout the calendar year, and shall:

A. Advise and monitor the Executive Committee on the implementation of the Plan of Action;

B. Advise and monitor the Executive Committee on the utilization of monies from an Environmental Education Trust Fund administered by the Department of Environmental Protection and Energy;

C. Support an annual Environmental Education Week and other activities designed to foster environmental awareness;

D. Report to the Governor as requested on issues relating to environmental education; and

E. Submit an annual report to the Governor on the status of environmental education in the State.

3. There is hereby convened an Environmental Education Executive Committee of nine members, established as a subgroup of the Environmental Education Commission, which shall

be chaired by the Chair of the Commission with the Commissioner of the Department of Environmental Protection and Energy and the Commissioner of the Department of Education as vice-chairs, and shall consist of the Commissioners of the following State Departments, or their designees: Higher Education; Health; and Law and Public Safety. The Executive Committee shall also consist of a representative from the Governor's Office and two representatives from the Commission, to be designated by the Governor.

The Chair shall preside over the meetings of the Executive Committee, and shall administer the agenda as submitted by the Committee.

4. The Executive Committee shall meet at least once every other month, beginning in the month following the effective date of this Order, and shall:

A. Enhance communication with and coordinate the involvement of State departments, including but not limited to those departments represented on the Commission in the implementation of the Plan of Action;

B. In consultation with the Environmental Education Commission, utilize monies available through the Environmental Education Trust Fund, administered by the Department of Environmental Protection and Energy, in order to achieve the goals and objectives of the Plan of Action;

C. Conduct an inventory of each State Department, the formal and non-formal education communities, business and industry, environmental groups and organizations, municipal and county government, and civic, youth and religious organizations in the area of environmental education and identify potential areas where environmental education can be infused into government operations.

D. Communicate the findings of the inventory to the Commission at its regularly scheduled meetings, work with the Commission in preparing its annual report, and otherwise establish a "clearinghouse" of information for an environmental education network.

Upon the request of four of the Executive Committee members, the Chair shall schedule a special meeting of the Executive Committee.

5. The New Jersey Department of Environmental Protection and Energy will be the lead agency, in close coordination with the Department of Education, in helping the Commission and the Executive Committee implement the Plan of Action.

6. This Order shall take effect immediately, and shall remain in effect until such time legislation is adopted and signed which supersedes this Order.

Issued November 15, 1993.

EXECUTIVE ORDER No. 112

I, JAMES J. FLORIO, 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 26, 1993, 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 off shall be granted to the aforementioned category of employees whose functions, in the opinion of their appointing authority, preclude such absence on November 26, 1993.

Issued November 19, 1993.

EXECUTIVE ORDER No. 113

WHEREAS, The adoption of new pollution prevention strategies can reduce the levels of toxic compounds present in the indoor and outdoor environment; and

WHEREAS, Each State employee has a right to work in a clean and healthy environment, and each citizen of this State has a right to live in a clean environment; and

WHEREAS, Approximately three million pounds of chemical pesticides are used in New Jersey each year by licensed applicators; and

WHEREAS, Chemical pesticides have been found in many cases to have harmful effects on human health and the environment; and

WHEREAS, Integrated Pest Management (IPM) consists of the use of a combination of pest monitoring, good sanitation practices, appropriate solid waste management, building maintenance, alternative physical, mechanical and biological pest controls, and only as a last resort the use of the least hazardous chemical pesticide; and

WHEREAS, An IPM strategy will provide environmentally-sound, cost-effective methods for controlling pest problems with minimal reliance on chemical pesticides and will help reduce the overall use of chemical pesticides in the State; and

WHEREAS, State agencies have already begun to develop and apply IPM practices, including the use of biological controls for gypsy moths that can damage State parks and forests and the application of other IPM techniques for State mosquito control programs; and

WHEREAS, State agencies have already demonstrated their long-term support for IPM strategies by funding research on state-of-the-art biological pest controls; and

WHEREAS, The implementation of IPM strategies by State agencies can serve as a model for the adoption of similar programs by schools, local governments and private businesses across the State;

NOW, THEREFORE, I, JAMES J. FLORIO, 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 Department of Environmental Protection and Energy (DEPE) shall implement the following mandates:

A. Conduct a pilot pest control program using IPM techniques for DEPE buildings and grounds. Technical and economic information obtained from this pilot program, which shall be completed within one year of the effective date of this Order, shall be used to provide assistance to other State agencies and instrumentalities on

the use of IPM techniques and develop model contract language for State procurement of pest control services utilizing IPM methods;

B. Appoint, within 30 days of the effective date of this Order, a task force to study the potential for increased use of IPM techniques by State agencies. This task force shall include, but need not be limited to, officials and employees from the DEPE, the Department of the Treasury and other appropriate State agencies; entomologists or other scientists specializing in IPM techniques; representatives of private firms that provide commercial pest control services, including firms specializing in IPM or organic lawn control methods; and representatives of environmental or other non-profit organizations whose purposes include the study and promotion of IPM methods. No later than one year following the effective date of this Order, this task force shall gather and evaluate technical and economic data on the use of IPM methods by federal, State or local agencies and private businesses; provide recommendations to the DEPE on the design and implementation of a pilot pest control program; and assist the DEPE in the development of model contract language for State procurement of pest control services utilizing IPM methods;

C. Develop a strategy and timetable for the implementation of IPM pest control measures at facilities owned or operated by State agencies and instrumentalities. This implementation strategy shall include, to the maximum extent practicable, the adoption of model contract language for State procurement of pest control services utilizing IPM methods; and

D. Collect and assess information on the types, quantities and uses of chemical pesticides purchased and applied by State agencies and instrumentalities in both the indoor and outdoor environment, and the development and implementation of any State agency pest control systems using IPM techniques.

2. Each State agency and instrumentality shall cooperate with the DEPE by furnishing information on its use of chemical pesticides and its development and implementation of any pest control programs using IPM techniques.

3. This Order shall take effect immediately.

Issued December 23, 1993.

EXECUTIVE ORDER No. 114

WHEREAS, In 1985, the New Jersey Legislature enacted the State Planning Act (N.J.S.A.52:18A-196 et seq.) calling for the creation of a State Development and Redevelopment Plan (State Plan) to be used as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation to bring about rational, managed growth and development in all regions of the State; and

WHEREAS, The State Plan was adopted by the State Planning Commission in June 1992, after five years of discussion and negotiation with the citizens of New Jersey in a widely regarded "cross-acceptance" process and, while the State Plan is not regulatory, it does provide necessary guidance for responsible stewardship of the State's natural resources and open space; and

WHEREAS, In adopting the State Planning Act, the Legislature declared that the State requires sound and integrated statewide planning to conserve its natural resources, revitalize its urban centers, protect the quality of its environment and provide affordable housing and adequate public services at reasonable cost while promoting beneficial economic growth, development and renewal; and

WHEREAS, The State Planning Act recognizes that the historic haphazard patterns of growth have threatened the quality of life in New Jersey and have failed to provide for the revitalization of our urban centers, sufficient affordable housing stock, or adequate conservation of natural resources, and therefore, requires the adoption of a coordinated, integrated and comprehensive plan for growth, development, renewal and conservation of all regions of the State and identifies areas for growth, agriculture, open space, and other appropriate designations; and

WHEREAS The State Plan provides a framework for streamlining permitting procedures and cost savings for the mutual benefit of the public and private sectors; and

WHEREAS, The State Plan is based upon an economic impact assessment which estimates that full implementation can save taxpayers \$1.3 billion in capital infrastructure costs over 20 years and up to \$400 million annually in operating costs statewide; and

WHEREAS, The State Planning Commission has entered Memoranda of Understanding with the Capital Budgeting and Planning Commission, the Council on Affordable Housing, the Department of Environmental Protection and Energy, the Department of Transportation and New Jersey Transit, establishing successful cooperative relationships directed toward reaching the goals of the State Plan; and

WHEREAS, Success in achieving the rational development goals of the State Planning Act, and the substantial cost savings which can be derived through full implementation of the State Plan, requires broad based acceptance and implementation of the State Plan's goals and mechanisms by all State agencies and departments, and coordinated planning among the State departments and agencies and local governments;

NOW, THEREFORE, I, JAMES J. FLORIO, 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. All State Departments and agencies shall:
 - a. Adopt and incorporate as part of their agency programmatic mission, policies which comport with the State Plan and act in a coordinated fashion in investing resources at the State and local level in implementing the State Plan and achieving their programmatic missions.
 - b. In their joint endeavors to implement the State Plan together with the State Planning Commission, encourage growth and development and direct infrastructure to locations and in patterns recommended by the strategies and policies contained in the State Plan.
 - c. Adopt policies which facilitate the establishment of development "centers" and encourage development which is consistent with the policy objectives of "planning areas" which constitute the "resource and management structure" of the State Plan.
 - d. Participate and cooperate with the Office of State Planning in its review and assessment of the functional plans of the departments or agencies, including, but not limited to water supply, natural resources, air quality, energy, open space and historic conservation, affordable housing, transportation, airport systems and rail systems, and encourage interdepartmental and interagency participation on advisory bodies related to policy and plan development to assure coordination in the implementation of the State Plan.

e. Support the Office of State Planning in the fulfillment of its statutory responsibilities with respect to its planning activities, including but not limited to, the legislatively mandated infrastructure needs assessment, monitoring, and evaluation program.

f. Collaborate in data base development and the exchange of information among departments and agencies, and establish appropriate institutional mechanisms, including data compatibility, to assure that data base development and the exchange of information occurs.

g. Coordinate efforts with the Office of State Planning to assist municipalities in gaining designation of development "centers."

h. Coordinate efforts with the Office of State Planning to assist distressed cities in developing Strategic Revitalization Plans.

i. Report to the Governor and Office of State Planning on June 1, 1994, and every six months thereafter, on their efforts in furtherance of this Order.

2. All State agencies and departments are authorized and directed, to the extent not inconsistent with law, to cooperate with and provide support to the Office of State Planning and State Planning Commission and furnish them with such information, including statistical and planning data, and assistance necessary to accomplish the purposes of this Order.

3. This Order shall take effect immediately.

Issued January 11, 1994.

EXECUTIVE ORDER No. 115

WHEREAS, Various natural hazards have caused physical and financial impact in New Jersey and will continue to do so and these impacts have resulted in unexpected costs to county and local governments as well as degradation of the State's health, safety, environment, infrastructure and economy; and

WHEREAS, The opportunities to significantly mitigate the impacts of coastal storms, hurricanes, floods, wildfires, earthquakes, and other natural hazards are identifiable and should be executed as funding is available; and

WHEREAS, There exist the skills, expertise, and talent within the Executive Branch departments and independent authorities to examine and make recommendations to reduce the vulnerability of New Jersey's citizens and property; and

WHEREAS, Executive Order No. 12 (1970-Cahill) and Executive Order No. 39 (1954-Meyner) direct State agencies to fully participate in the emergency management system; and

WHEREAS, The Office of Emergency Management in the Department of Law and Public Safety is charged with the responsibility to administer the State's comprehensive emergency management programs; and

WHEREAS, The Governor's Advisory Council on Emergency Services is empowered to authorize expenditures from the Governor's Emergency Services Fund, upon approval of the Governor, to provide relief from an emergency; and

WHEREAS, A need exists to provide formal recognition, authority and responsibility to this organizational structure;

NOW, THEREFORE, I, JAMES J. FLORIO, 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. An interagency State Hazard Mitigation Team (SHMT) is established. A representative of the Office of the Governor will chair the Team and the State Hazard Mitigation Officer appointed by the Governor for the most recent Presidential Disaster Declaration, pursuant to federal law, shall serve as Deputy Chair.

2. In addition to the Chair and Deputy Chair, the team shall consist of the following members or their designees, with the ability to add other participants as appropriate:

- A. Department of Community Affairs:
Assistant Director Codes and Standards.
Representative, Division of Fire Safety.
- B. Department of Education:
Emergency Coordinator.
- C. Department of Environmental Protection and Energy:
Supervisor of Land-Use Regulations.

State Floodplain Management Coordinator.

State Forest Fire Warden.

D. Department of Insurance:

State Ombudsman.

E. Department of Transportation:

Director of Roadway Design.

F. Department of the Treasury:

Representative, Office of Statewide Planning.

Representative, Office of Management and Budget.

G. Department of Law and Public Safety:

Representative, Office of the Attorney General.

Representative, Office of Emergency Management.

All participants shall be prepared to evaluate hazard mitigation initiatives based on current agency policies and programs.

3. The activities of the team shall be coordinated by a Steering Committee consisting of the Chair and the Deputy Chair, Assistant Director of Codes and Standards, Director of Roadway Design, State Floodplain Management Coordinator, Supervisor of Land Use Regulation, the Representative of the Office of the Attorney General, and the Representative of the State Office of Emergency Management.

4. The SHMT shall develop a systematic program to identify hazards, monitor changes in hazard vulnerability and implement measures for reducing potential damage by providing a mechanism for follow-up activities crucial to the successful implementation of team recommendations.

5. The SHMT shall develop and maintain a comprehensive plan for the reduction of natural hazards. The team shall review and update this document as deemed necessary.

6. The SHMT shall work to increase the public's awareness of the risk associated with known hazards and promote preparedness among residents of the State.

7. The SHMT shall meet at the call of the Chair, but not less frequently than twice a year.

8. The SHMT shall serve as an advisory group to the Governor's Advisory Council on Emergency Services (GACES) and

shall prepare post-disaster hazard mitigation recommendations for all applications for assistance.

9. GACES shall review and approve such recommendations based on their expected effectiveness in reducing the threat to the health, safety and property of the citizens of New Jersey.

10. The SHMT shall investigate and recommend cost-effective hazard mitigation opportunities to the Office of Emergency Management and to the Governor's Advisory Council on Emergency Services as part of any disaster recovery effort.

11. The SHMT shall prepare and submit to the Office of Emergency Management an annual work program which shall contain a budgetary needs statement. The team shall provide to the State Director an annual status report covering progress achieved through team activities.

12. This Order shall take effect immediately.

Issued January 14, 1994.

REORGANIZATION PLAN

(2173)

REORGANIZATION PLAN DIVISION OF JUVENILE SERVICES

NOTICE OF A PLAN FOR THE TRANSFER OF THE DIVISION OF JUVENILE SERVICES AND RELATED FUNCTIONS FROM THE DEPARTMENT OF CORRECTIONS TO THE DEPARTMENT OF HUMAN SERVICES

TAKE NOTICE that, on March 22, 1993, Governor James J. Florio hereby issues the following Reorganization Plan (No.001-1993) providing for the transfer of the Division of Juvenile Services and related functions from the Department of Corrections to the Department of Human Services.

GENERAL STATEMENT OF PURPOSE

The Division of Juvenile Services was created in 1978 by the Commissioner of Corrections pursuant to his authority under Public Law 1976, Chapter 98, (N.J.S.A.30:1B-1 et seq.). The Division fulfills the obligations and mandate of the Department of Corrections regarding juvenile offenders by, first, protecting the public from juvenile criminal offenders; second, separating juvenile offenders from the adult offender population; and third, creating an environment which encourages rehabilitation of offenders and their reintegration into the community.

The purpose of this Reorganization Plan is to implement the recommendation of the Governor's Cabinet Action Group on Juvenile Justice (which was established by Executive Order No. 27 (1991)) to create an efficient governmental structure which protects the public from further criminal acts by adjudicated youth and best promotes the rehabilitation of juvenile offenders in the most appropriate setting. Through its research, the Action Group found that a comprehensive program would need to be established, one that provides a number of alternatives, ranging from secure placement in juvenile institutions for violent youth offenders to day treatment type programs in the youth's community to reintegrate the rehabilitated offender or non-violent offender into the community.

The Cabinet Action Group recognized the great variety of human service needs of those youth committed to the Division of Juvenile Services in the Department of Corrections. These juve-

niles require a myriad of services in the areas of mental health, developmental disabilities, health, substance abuse and remedial education. Additionally, many of these youth come from dysfunctional or non-existent families or from communities in crisis, and they are often victims of neglect, physical, psychological, or sexual abuse.

In the course of its work, the Cabinet Action Group examined the programs of the major State departments with the purpose of recommending the placement of the Division of Juvenile Services in the State-level department which best matches the needs of these juveniles. It became evident that the present position of the Division of Juvenile Services within the Department of Corrections is not the best placement. In fact, because of the paramount problems stemming from the unrelenting increase in the adult offender population, the Department of Corrections is not designed to provide the sanctions and services needed by juveniles, resulting in the Division of Juvenile Services accessing resources outside of the department. Therefore, the present placement of the division is not the most efficient placement for appropriate programs or for long-term cost efficiency.

In examining all the other possible State-level departments, i.e., Department of Human Services, Department of Law and Public Safety, Department of Community Affairs, Department of Health, and Department of Education, it became evident that the Department of Human Services is the most appropriate.

The Department of Human Services already provides many of the services required by youth committed to the Division of Juvenile Services, namely, mental health, services for the developmentally disabled, abused and neglected, case management, and educational services. In addition, the Department of Human Services has experience with providing secure 24-hour care. As a result, the recommendation by the Governor's Cabinet Action Group on Juvenile Justice is to transfer the Division of Juvenile Services from the Department of Corrections to the Department of Human Services.

This transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Services recognizes the inter-relationship of the already existing services in the Department of Human Services and the needs of youth committed to the Division of Juvenile Services. This Plan will develop a rational approach to the juvenile delinquency problem by better implementing a range of dispositions as designed in the Code of Juvenile Justice enacted in 1982. The Reorganization

Plan is designed to protect society from further criminal acts by these juveniles not only by maintaining maximum and medium-security institutions for the dangerous and incorrigible but also by increasing the chances of rehabilitation to break the cycle of crime. It will also provide the State with a structure for future improvements to the juvenile justice system.

This Reorganization Plan proposes that the institutions, programs, personnel, powers, and responsibilities listed herein and heretofore administered by the Division of Juvenile Services in the Department of Corrections be transferred to the Department of Human Services, thereby creating a Division of Juvenile Services in the Department of Human Services. The statutory and administrative powers and responsibilities of the Commissioner of Corrections as they apply to juveniles committed to the Department of Corrections will be transferred to the Commissioner of Human Services.

These actions will promote the policy objectives of protecting the public while increasing the efficiency of providing a coordinated range of rehabilitative services in the most appropriate environment for juvenile offenders. By moving the secure care institutions for juveniles into the Department of Human Services, restrictive facilities and services will be available for those juveniles who are a danger to the public. For juveniles who do not pose a danger to the public, the new placement of the division will more easily match the needs of these troubled juveniles to services offered through the Department of Human Services. The effective programs already begun by the Division of Juvenile Services in the Department of Corrections can be more easily augmented. Additionally, placement of Juvenile Services in the Department of Human Services will enable the division to be in a better position to access additional federal funds for health care and rehabilitation programs. The result will be a better designed, more efficient and cost-effective approach to rehabilitating juveniles in New Jersey.

Therefore, in accordance with the provisions of the "Executive Reorganization Act of 1969," P.L.1969, c.203 (C.52:14C-1 et seq.), I find with respect to each reorganization included in this Plan that each is necessary to accomplish the purposes set forth in section 2 of the act and will do the following:

1. Promote more effective management of the Executive Branch and its departments because it will more appropriately group similar functions within already existing agencies;
2. Promote better and more efficient execution of the law by integrating the State's mandate to protect the public from juvenile

offenders, provide services to at-risk youth and rehabilitate adjudicated juveniles;

3. Group, coordinate and consolidate functions in a more consistent and practical way according to major purposes; and

4. Eliminate duplication and overlapping of effort by consolidating certain functions and result in a more efficient use of state and federal funds.

THE PROVISIONS OF THE REORGANIZATION PLAN ARE
AS FOLLOWS:

A. This reorganization provision will transfer the Division of Juvenile Services from the Department of Corrections to the Department of Human Services. This transfer of placement will enable the division not only to maintain and administer secure facilities for the dangerous or incorrigible offender but also to provide better services to rehabilitate and remediate the problems of other juvenile offenders. In addition, this transfer of placement will better enable the Commissioner of Human Services to plan for and implement programs which prevent young people from becoming involved with or further involved with the juvenile justice system. Further, this transfer will assist the Department of Human Services in its attempt to obtain federal funding for programs needed by, and/or already provided to, these juveniles with State funds.

Therefore, I hereby order the following reorganization:

1. a. The powers, duties and functions of the Commissioner and the Department of Corrections contained in P.L.1976, c.98 (C.30:1B-1 et seq.) as applied to the commitment, incarceration and rehabilitation of juvenile offenders pursuant to the New Jersey Code of Juvenile Justice, P.L.1982, c.77, as amended (C.2A:4A-20 et seq.), are continued and are transferred to the Commissioner and Department of Human Services, except as hereinafter provided.

b. The powers, duties and functions of the Commissioner and the Department of Corrections concerning the confinement and transfer of juvenile offenders pursuant to P.L.1918, c.147, as amended (C.30:4-81 et seq.), are continued and transferred to the Department of Human Services, except as hereinafter provided.

c. The Division of Juvenile Services of the Department of Corrections, including the functions, powers and duties assigned by the Commissioner of Corrections to it pursuant to P.L.1976, c.98 (C.30:1B-

1 et seq.), is continued and is transferred to and constituted as the Division of Juvenile Services in the Department of Human Services.

d. Subject to the provisions of paragraph j. of this subsection, all programmatic, administrative and support staff presently comprising the Division of Juvenile Services, Department of Corrections, are transferred to the Division of Juvenile Services, Department of Human Services, with all of their present powers, duties and responsibilities and any other powers, duties and responsibilities contained herein.

e. A proportionate share of those support services or funds to purchase such services presently housed in the Department of Corrections' Central Office utilized for the support of the Division of Juvenile Services, Department of Corrections shall be transferred from the Department of Corrections to the Department of Human Services. These transfers shall be made by agreement between the Commissioner of Corrections and the Commissioner of Human Services after determining the number and type of positions presently utilized for support of the division and the appropriateness of transferring personnel, positions or funding.

f. It is the intention of this Reorganization Plan that Corrections Officers continue to work at, and provide security for, maximum and medium-security institutions. To that end, the Department of Corrections shall provide security by Corrections Officers for the institutions delineated in sections A. 2.a. and A. 2.b. of this Reorganization Plan and any other maximum or medium-security institution developed by the Division of Juvenile Services for juvenile offenders. This shall be accomplished by a Memorandum of Understanding to be executed by the Commissioners of Human Services and Corrections. All Corrections Officers and positions providing these services shall maintain their Civil Service titles along with all their powers, duties, responsibilities, and rights held pursuant to New Jersey law and regulation.

g. Nothing in this Reorganization Plan shall be construed to deprive any person of any tenure rights or of any right to protection provided him or her by Title 11A of the New Jersey Statutes, Civil Service, or under any pension law or retirement system.

h. It is the intention of this Reorganization Plan that resources continue to be provided for the education of juvenile offenders whose custody and supervision shall be transferred to the Department of Human Services and those offenders between the ages of 18 and 21 whose custody and supervision shall remain with the Department of Corrections, and, accordingly, existing and future

monies, personnel, and other educational resources shall be appropriately apportioned between the Departments of Human Services and Corrections, with both Commissioners addressing and resolving questions involved in such apportionment. To that end, all funds for the education of juvenile offenders whose custody and supervision shall be transferred to the Department of Human Services by this Reorganization Plan and collected pursuant to the "State Facilities Education Act of 1979," P.L.1979, c.207, as amended (C.18A:7B-1 et seq.) (SFEA), are to be forwarded and hereafter given to the Commissioner of Human Services and used according to the provisions of the SFEA. The Commissioner of Corrections shall forward to the Department of Human Services and the Department of Education an accurate census of those juvenile offenders who will be transferred to the Department of Human Services. This report will allow appropriate budget planning by the Department of Human Services and fund allocation by the Department of Education for the education of these juvenile offenders.

All federal and State educational grants and contract funds received for these juvenile offenders are redesignated and shall be immediately forwarded to the Commissioner of Human Services and used accordingly.

Nothing contained in this Reorganization Plan shall be construed to affect funds received pursuant to the provisions of the SFEA for those persons under the age of 21 years whose custody is not transferred by this Reorganization Plan from the Department of Corrections to the Department of Human Services. The Department of Corrections shall continue to receive such funds to be used according to the provisions of the SFEA.

i. The powers, duties, and responsibilities of the Office of Education created and established in the Department of Corrections pursuant to the "State Facilities Education Act of 1979," P.L.1979, c.207, s.12 (C.18A:7B-8), for the education of those juvenile offenders whose custody is transferred to the Department of Human Services and those juvenile offenders whose custody will be given to the Department of Human Services subsequent to the effective date of this Reorganization Plan are hereby transferred to the Office of Education in the Department of Human Services pursuant to P.L.1979, c.207, s.13 (C.18A:7B-9).

j. Anything hereinbefore stated to the contrary notwithstanding:

(1) All current Division of Juvenile Services employees affected by the transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Ser-

vices will have three months to make a decision to stay within the Department of Corrections. During this three-month period, each employee shall remain in his or her Department of Corrections position and retain all rights and emoluments thereto. Anyone deciding to remain in Corrections at the conclusion of the three-month period will move to available positions within a reasonable period of time, allowing for the need of Human Services to hire to fill the position being vacated. Any employees who wish to remain in Corrections and who cannot be immediately accommodated at the conclusion of the three-month period will have rights to transfer as positions become available, second only to applicable special re-employment rights. Anyone choosing to move to Human Services shall retain all seniority earned at the Department of Corrections.

(2) All current Division of Juvenile Services employees who were impacted by the most recent round of layoffs, and who wish to transfer to the Department of Human Services, as well as former Division of Juvenile Services employees who were so impacted, will have special re-employment rights as follows:

They will be given the opportunity to select priority special re-employment rights to either the Department of Human Services or the Department of Corrections. This choice shall be exercised upon the conclusion of the three-month period specified in subparagraph 1 above, by formal notice to the Department of Personnel. Regardless of which department is selected for priority rights, former and current Juvenile Services employees will retain special re-employment rights over regular re-employment and open competitive lists on a Statewide basis.

(3) Employees will have promotional rights in the Department they select for employment. The existing promotional lists for Juvenile Services employees established under the Division of Juvenile Services unit scope will be transferred to and usable for promotional opportunities within the Division of Juvenile Services in the Department of Human Services for those employees who opt to remain with Human Services. Employees who opt to remain with the Department of Corrections will not be eligible for appointment from these lists and will establish their promotional rights in the Department of Corrections. However, employees who opt to remain

with the Department of Corrections but cannot be immediately accommodated at the conclusion of the of the three-month period will have their promotional rights preserved until their transfer back to the Department of Corrections can be effectuated.

(4) There will be a written agreement between the Commissioner of Corrections and the Commissioner of Human Services that, in accordance with N.J.S.A.18A:28-6.1, teachers who are transferred from the Department of Corrections to the Department of Human Services shall retain all tenure or if non-tenured all time served toward tenure.

(5) As stated in this Reorganization Plan, after the juvenile population is moved to the Department of Human Services there will continue to be education funding for eligible youth 18 to 21 and any other juveniles remaining in the Department of Corrections.

2. a. The New Jersey Training School for Boys created pursuant to P.L.1918, c.147, as amended (C.30:1-7), and previously transferred to the Commissioner of Corrections pursuant to P.L.1976, c. 98, s.8 (C.30:1B-8), is continued and along with all those juveniles committed thereto by court order, law, classification, regulation or contract, are hereby transferred from the Department of Corrections to the Division of Juvenile Services, Department of Human Services.

b. The Juvenile Medium Security Center created pursuant to P.L.1918, c.147, as amended (C.30:1-7), and previously transferred to the Commissioner of Corrections pursuant to P.L.1976, c.98, s.8 (C.30:1B-8), is continued and, along with all those juveniles committed thereto by court order, law, classification, regulation or contract, are hereby transferred from the Department of Corrections to the Division of Juvenile Services, Department of Human Services.

c. All residential and day care facilities and programs established pursuant to the powers delegated to the Division of Juvenile Services, Department of Corrections, by the Commissioner of Corrections pursuant to his powers contained in P.L.1976, c.98 (C.30:1B-1 et seq.), along with all those youth committed to participate therein by court order, law, classification, regulation or contract, are hereby transferred to the Division of Juvenile Services, Department of Human Services.

d. All furnishings and equipment presently located in the institutions and programs of the Division of Juvenile Services, Department

of Corrections, transferred herein are also transferred to the Division of Juvenile Services, Department of Human Services.

e. All operating and capital funding demarcated for the aforesaid institutions and programs of the Division of Juvenile Services, Department of Corrections, are to be transferred by agreement between the Commissioner of Corrections and the Commissioner of Human Services for use in the Division of Juvenile Services, Department of Human Services.

3. a. The powers, duties, responsibilities and membership of the Institutional Board of Trustees established for the New Jersey Training School for Boys pursuant to P.L.1918, c.147, as amended (C.30:4-1 et seq.), previously transferred to the jurisdiction of the Commissioner of Corrections pursuant to P.L.1976, c.98, s.21 (C.30:1B-21), is continued and transferred to the jurisdiction of the State Board of Institutional Trustees of the Department of Human Services. The State Board of Institutional Trustees of the Department of Human Services shall select and appoint members to the Institutional Board of Trustees for the New Jersey Training School for Boys as their existing terms expire, pursuant to N.J.S.A.30:4-1 et seq.

b. Notwithstanding any provision contained in this Reorganization Plan, the Commissioner of Corrections and the Commissioner of Human Services shall develop a procedure for transferring custody of committed juveniles who have reached the age of 18 during their commitment, from the Department of Human Services to the Department of Corrections in instances where the public safety, safety of juvenile offenders, or control of the program is threatened and necessity requires placement in an adult corrections program.

c. Nothing contained in this Reorganization Plan shall affect or transfer the custody of juveniles convicted of adult offenses pursuant to N.J.S.A.2A:4A-26 and N.J.S.A.2A:4A-27.

B. This transfer of the Juvenile Monitoring Unit will ensure inspections of the county detention centers and compliance of the centers to standards developed for juvenile offenders. As one part of the comprehensive system, these detention centers serve a critical role in the juvenile justice system and must also be safe for the juveniles residing therein.

Therefore, I hereby order the following reorganization:

1. a. All functions, powers and duties of the Commissioner of Corrections with respect to all juvenile detention facilities throughout the State pursuant to P.L.1982, c.77, s.18 (C.2A:4A-37), are hereby transferred to the Commissioner of Human Services.

b. The powers, duties and responsibilities of the Commissioner of Corrections for establishing standards and monitoring of juvenile detention facilities pursuant to P.L.1982, c.77, s.18 (C.2A:4A-37), are hereby transferred to the Commissioner of Human Services. All existing agreements made between county governments and the Department of Corrections concerning juvenile detention centers are hereby modified to transfer the responsibilities, duties and obligations specified in these agreements between the county governments and the Department of Corrections to between the county governments and the Department of Human Services.

c. The Juvenile Detention Monitoring Unit, Department of Corrections, established pursuant to the powers of the Commissioner of Corrections pursuant to N.J.S.A.30:1B-1 et seq., to fulfill the obligations of the Department of Corrections in monitoring juvenile detention centers throughout the State pursuant to the federal "Juvenile Justice and Delinquency Prevention Act of 1974," as amended, and pursuant to N.J.S.A.2A:4A-37, is continued and transferred along with its staff, powers, duties and responsibilities to the Department of Human Services.

C. This reorganization provision changes legal custody of juvenile parolees from the Department of Corrections to the Department of Human Services. The Plan also changes the reporting requirements of the State Parole Board, from the Department of Corrections to the Department of Human Services to ensure an efficient means of fulfilling the mandate of the law under the Parole Act of 1979, P.L.1979, c.441 (C.30:4-123.45 et seq.).

Therefore, I order the following reorganization:

1. a. The powers, duties and functions of the State Parole Board established pursuant to P.L.1979, c.441 (C.30:4-123.45 et seq.), regarding juvenile offenders are continued. The State Parole Board will, however, file all of its reports and recommendations regarding juveniles with the Department of Human Services rather than the Department of Corrections as stipulated in N.J.S.A.30:4-123.45 et seq. In addition, pursuant to P.L.1979, c.441, s.15 (C.30:4-123.59), the legal custody of each juvenile parolee shall be transferred to the

Department of Human Services. Supervision of juvenile parolees shall remain under the Bureau of Parole within the Department of Corrections until such time that an agreement between the Commissioner of Human Services and the Commissioner of Corrections in consultation with the State Parole Board effectuates a transfer of this function to the Department of Human Services. At all times supervision of the juvenile parolees shall be in accordance with the rules of the State Parole Board.

b. All funding, programs and positions created to provide juvenile parole services by the Bureau of Parole within the Department of Corrections are continued and shall be transferred to the Department of Human Services by agreement between the Commissioner of Human Services and the Commissioner of Corrections in consultation with the State Parole Board. Such agreement shall also specify appropriate changes in the reporting requirements, funding, positions, and administrative housing and support for the district juvenile parole officers.

D. This reorganization provision will promote closer cooperation among the various departments responsible for the provision of services to troubled youth by coordinating services and making more services available to juveniles in a more timely fashion, thereby preventing juveniles from becoming involved in the juvenile justice system and rehabilitating those juveniles already involved before they commit additional or more serious crimes. The creation of an Advisory Council on Juvenile Justice, essentially combining the Governor's Cabinet Action Group on Juvenile Justice with additional public and legislatively appointed members, will further this cooperative and better coordinated effort to provide effective juvenile services.

Therefore, I hereby order the following reorganization:

1. a. The Commissioner of Human Services shall establish an Advisory Council on Juvenile Justice. The Advisory Council shall consist of no less than 20 nor more than 25 members, who shall serve without compensation but may be reimbursed for reasonable expenses incurred during performance of their duties for the Advisory Council, and shall include:

The Commissioner of Human Services, who shall serve as
Chairperson;
The Attorney General;
The Commissioner of Corrections;
The Commissioner of Education;

The Commissioner of Health;
The Commissioner of Labor;
The Commissioner of Community Affairs;
The Public Advocate; and

Between seven and twelve public members, chosen by the Commissioner of Human Services on the basis of their expertise or interest in making long-term improvements to the juvenile justice system.

In addition, the Administrative Director of the Courts shall be invited to participate on the Advisory Council. Also, the President of the Senate and the Speaker of the General Assembly shall each be asked to select two individuals chosen on the basis of their expertise or interest in making long-term improvements to the juvenile justice system to serve as members of the Advisory Council.

b. The Advisory Council shall assist the Commissioner of Human Services to:

1. Expand the range of disposition options available to the Court, consistent with the Code of Juvenile Justice, including the sharing of resources to allow for more appropriate intervention at the local level;

2. Develop a range of services for committed youth, in particular those youth in secure settings under the jurisdiction of the Commissioner of Human Services;

3. Work with the county youth services commissions and assist the Commissioner of Human Services in fulfilling the statutory responsibilities outlined in P.L.1982, c.80, s.16, as amended (C.2A:4A-91); and

4. Report to the Governor and the Legislature on an annual basis as to issues, programs, and the setting of budgetary and policy priorities.

c. The Commissioner of Human Services is authorized to call upon any department or agency of state government to provide such information, resources, or other assistance deemed necessary to discharge the responsibilities outlined above.

d. The Commissioner of Human Services shall file a report with the Governor and Legislature within 12 months of the effective date of this Reorganization Plan on the transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Services and shall thereafter report annually to the Governor and the Legislature on the operation of the Division of Juvenile Services in the Department of Human Services.

GENERAL PROVISIONS

1. Whenever in any law, rule, regulation, order, contract, document judicial or administrative proceeding or otherwise, reference

is made to the Commissioner or the Department of Corrections regarding a juvenile or juvenile offender as defined in P.L.1982, c.77, as amended (C.2A:4A-20 et seq.), the same shall mean and refer to the Commissioner of the Department of Human Services.

2. All transfers directed by this plan shall be made in accordance with the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

3. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies.

A copy of this Reorganization Plan was filed on March 22, 1993, with the Secretary of State and the Office of Administrative Law (for publication in the New Jersey Register). This Plan shall become effective in 60 days on May 21, 1993, unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan. This Reorganization Plan shall be implemented on July 1, 1993, or such earlier date as the Governor may designate by Executive Order.

TAKE NOTICE that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the public laws and in the New Jersey Register under a heading "Reorganization Plans."

Filed March 22, 1993.

Effective May 21, 1993.

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“New Jersey Wiretapping and Electronic Surveillance Act,” various amendments, C.2A:156A-27 et seq., amends C.2A:156A-2 et al., Ch.29.

Public official, employee, conviction of crime, certain, records not subject to expungement, amends N.J.S.2C:52-2, Ch.301.

Report by Governor on reprieves, pardons, commutations granted, annual to Legislature; required, C.2A:167-3.1, Ch.26.

DOMESTIC RELATIONS

Adoption, laws concerning; revised, C.9:3-39.1 et al., amends C.9:3-38 et al., repeals C.9:3-39 et al., Ch.345.

“Child Support Collection Reform Act,” designated, C.2A:17-56.27 et seq., Ch.110.

Child support payments, overdue, modification, certain circumstances; prohibited, amends C.2A:17-56.23a, Ch.45.

Divorce, filing fee; increased, fund for grants to displaced homemaker programs; established, C.52:27D-43.24a et seq., amends N.J.S.22A:2-12, Ch.188.

Family preservation services, Department of Human Services; program established, C.30:4C-74 et seq., Ch.157.

Marriages:

Solemnization by county clerks, permitted, amends R.S.37:1-13, Ch.126.

Solemnization by retired, resigned judges, certain; permitted, amends R.S.37:1-13, Ch.324.

Visitation by grandparents, siblings; grounds, proofs, amends C.9:2-7.1, Ch.161.

DRUGS

“Dosage form,” defined in “Prescription Drug Price and Quality Stabilization Act,” amends C.24:6E-4, Ch.256.

ELECTIONS

- Absentee ballots, access by voters; expanded, C.19:59-8.1, amends C.19:57-2 et al., Ch.73.
- Campaign contributions; limitations, C.19:44A-20.1 et al., amends C.19:44A-2 et al., Ch.65.
- Campaign-related payments, “street money,” checks; required, C.19:44A-11.7, Ch.370.

ENVIRONMENT

- Air pollution control, low emission vehicle measures, adoption; authorized, C.26:2C-8.6 et seq., Ch.69.
- Air pollution control violations, certain, affirmative defense; provided, C.26:2C-19.1 et seq., Ch.89.
- Air pollution registration information, certain, public access; provided, amends C.26:2C-9, Ch.257.
- Cleanup, removal costs, immunity, limited, additional; provided, petroleum dischargers, certain, amends C.58:10-23.11g3, Ch.382.
- “Coastal Area Facility Review Act,” revised, C.13:19-5.1 et al., amends C.13:19-2 et al., repeals C.13:19-7 et al., Ch.190.
- Coastal protection license plates, issuance; fees, use, C.39:3-27.47 et seq., Ch.168.
- Coastal Protection Technical Assistance Service (CPTAS); established at Stevens Institute of Technology, C.18A:64L-1 et seq.; amends C.13:19-16.1, Ch.176.
- Fee revenues to support permit management staff; authorized, C.13:1D-114.1, Ch.9.
- Groundwater remedial actions, application, review, process; changed, C.58:10A-7.2 et al., Ch.351.
- Hazardous discharge cleanup, loans; authorized, amends C.34:1B-7.13, Ch.286.
- “Industrial Site Recovery Act,” C.13:1K-9.6 et al., amends C.13:1K-6 et al., Ch.139.
- Lenders, fiduciaries; spill, cleanup, liability limited, C.58:10-23.11g4 et al., Ch.112.
- “New Jersey-New York Clean Ocean and Shore Trust (COAST) Committee Act,” C.32:34-1 et seq., Ch.57.
- New Jersey Pollutant Discharge Elimination System permit, required signature; clarified, amends C.58:10A-6, Ch.23.
- New Jersey Wastewater Treatment Trust, debt ceiling; suspended for one year, amends C.58:11B-6, Ch.194.
- Payment schedule for permit application fees, establishment by Department of Environmental Protection; required, C.13:1D-120 et seq., Ch.361.

ENVIRONMENT (Continued)

- Recycled paper products; revision of State purchase mandates, encouragement of purchase, C.13:1E-99.27a, amends C.13:1E-99.12 et al., Ch.109.
- Recycling facilities, inclusion in new multifamily housing developments; required, C.13:1E-99.13a, amends C.40:55D-38, Ch.81.
- Reforestation plans; development required by State entities, certain, C.13:1L-14.1 et seq., Ch.106.
- Sanitary landfill facility; economic benefit, municipalities, certain, provided; amends C.13:1E-28, Ch.152.
- “Water Supply Management Act”; revised, designation of critical water supply concerns areas; permitted, C.58:1A-7.3 et al., amends C.58:1A-6 et al., Ch.202.
- Wetlands creation, enhancement, restoration, inventory of suitable sites by counties; authorized, C.13:9C-1 et seq., amends C.13:9B-13 et al., Ch.298.

ESTATES AND TRUSTS

- Community trusts, remaindermen; permitted, provisions affecting certain board members; eliminated, amends C.3B:11-21 et al., Ch.224.
- Fiduciaries, division of trusts without court approval; permitted, amends N.J.S.3B:14-23, Ch.360.
- Pension, profit-sharing assets, certain, exemption from creditors; provided, amends R.S.25:2-1, Ch.177.

EXECUTIVE ORDERS

- Aquaculture Development Task Force; established, No.104.
- Blind trusts, termination by State officers, employees; disclosure required, No.95.
- Bonds, notes, similar instruments, issuance on basis of competitive bidding; required, No.92.
- Correctional facilities overcrowding, continuing state of emergency declared, No.80.
- Cuba, consequences of liberation, study by Department of Commerce and Economic Development; required, No.89.
- Defense Conversion and Community Assistance Commission; created, No.87.
- Dominick M. Pilla, James E. Smith; deaths commemorated, No.105.
- Francisco Baez; death commemorated, No.98.
- Governor's Commission on Women's Health; established, No.108.
- Governor's Committee on Children's Services Planning; established, No.35 of 1983, rescinded, No.102.

EXECUTIVE ORDERS (Continued)

Governor's Committee on Welfare Reform; established, No.101.

Highlands Trust Advisory Board; created, No.82.

Integrated Pest Management, strategy, implementation; directed, No.113.

"Job Training Partnership Act," compliance; directed, No.107.

John E. Dimon; death commemorated, No.100.

Legalized Gaming Policy Study Commission; created, No.83.

Mildred Barry Garvin; death commemorated, No.96.

New Jersey Advisory Board for Vocational Rehabilitation, reconstituted, redennominated New Jersey Division of Vocational Rehabilitation Services Rehabilitation Advisory Council, No.110.

New Jersey Commission on Environmental Education; reconvened, No.111.

New Jersey Independent Living Advisory Council, redennominated New Jersey Independent Living Council, No.106.

New Jersey-Israel Commission; continued, No.90.

New Jersey Statewide Consumer Advisory Board of the Commission for the Blind and Visually Impaired, reconstituted, redennominated New Jersey Commission for the Blind and Visually Impaired Rehabilitation Advisory Council, No.103.

Public works projects, agreements; regulated, No.99.

Recycled products, procurement, purchase; mandated, No.91.

Regulatory system, State, review by Chief Counsel; directed, No.97.

Reorganization Plan (No.001-1993), implementation; modification, No.93.

Sexual harassment, review of policies to eradicate, report on findings, training programs; required, No.88.

Set-aside policy for small businesses, female businesses, and minority businesses; adopted, No.84.

State Development and Redevelopment Plan, compliance; directed, No.114.

State employees, November 26, 1993 granted as a day off, No.112.

State Hazard Mitigation Team; established, No.115.

State Interagency Coordinating Council on services for disabled infants; established, No.94.

State of Emergency, limited, severe weather conditions, No.85; terminated, No.86.

Task Force for the Review of the Farmland Assessment Program; created, No.109.

Thurgood Marshall; death commemorated, No.81.

FIRE SAFETY

Bureau of fire safety, powers, functions, duties transferred to Division of Fire Safety, C.52:27D-25h, amends C.52:27D-25a et al., Ch.218.

FIRST AID AND RESCUE SQUADS

First aid, ambulance, rescue squads, mutual aid during emergencies, requests, agreements; authorized, C.26:2K-60 et seq., Ch.58.

FISH, GAME AND WILDLIFE

Fishing licenses, Pennsylvania, holders may fish in Delaware River, C.23:3-1d, amends R.S.23:1-1 et al., repeals R.S.23:9-1 et seq., Ch.20.

Hunting, fishing license fees, New Jersey National Guard; exempt, C.23:3-1e et seq., Ch.303.

Lawful taking of wildlife, hindrance, prevention; prohibited, C.23:7A-1 et seq., Ch.11.

License plate fees, certain, wildlife conservation, C.39:3-33.10, Ch.119.

FOOD

Meat of wild game animals, certain, donation to food bank, organization providing food to needy; permitted, C.24:16B-61.1, Ch.355.

GAMES AND GAMBLING

Casino gaming, simulcasting; laws changed, C.5:12-71.1 et al., amends C.5:12-5 et al., Ch.292.

Casino Reinvestment Development Authority, law revised; parking fees imposed, C.5:12-173.1 et seq., amends C.5:12-144.1 et al., Ch.159.

Casino simulcasting; employee qualifications, contractual conditions established; amends C.5:12-82 et al., Ch.121.

"Charity Racing Day for Backstretch Benevolency Programs;" designated, C.5:5-44.8, Ch.15.

Compulsive gambling treatment programs, dedication of certain casino penalties; required, C.26:2-169, amends C.5:12-145, Ch.229.

Racetrack, Freehold, parimutuel pool, law governing distribution, expiration date; changed, amends section 3 of P.L.1984, c.236, Ch.323.

Racetracks:

Parimutuel pool, laws regulating distribution; revised, amends C.5:5-44.3 et al., Ch.353.

Parimutuel wagering, alternative systems; permitted, C.5:5-63.1, Ch.24.

GAMES AND GAMBLING (Continued)

Thoroughbred award program; administration, disbursement, changed, amends C.5:5-66, Ch.128.

Winnings, nonresidents; taxable as gross income, amends N.J.S.54A:5-8, Ch.143.

HANDICAPPED PERSONS

Handicapped license plates, issuance for motorcycles; permitted, amends C.39:4-206, Ch.277.

Leases, termination by handicapped tenants, certain conditions; permitted, amends C.46:8-9.2, Ch.208.

HEALTH

Breast cancer, preparation of informational booklet; required, C.26:2-168 et al., Ch.225.

Children relief program; catastrophic illness, changes, various, C.26:2-154.1, amends C.26:2-149 and C.26:2-151, Ch.103.

Donors of anatomical gifts, death under investigation, removal of organs in time compatible with transplantation; required, C.52:17B-88.7 et seq., Ch.276.

Drug review program; standards, pharmacist responsibilities, C.45:14-15.1 et seq., Ch.120.

Fetal alcohol syndrome warning notices, posting; required, C.33:1-12a et seq., Ch.43.

Health benefits plans, individual; law revised, C.17B:27A-16.1 et seq., amends C.17B:27A-2 et al., repeals section 16 of P.L.1992, c.161, Ch.164.

Health benefits plans, small group; law revised, C.17B:27-47 et seq., amends C.17B:27A-17 et al., repeals C.17B:27A-46, Ch.162.

Health Care Administration Board, long-term health care representative; amends C.26:2H-4, Ch.56.

"Health Wellness Promotion Act," C.26:1A-36.11 et al., Ch.327.

Hepatitis inoculations for health, public safety workers; provided, C.26:4-100.13, amends N.J.S.2C:64-6, Ch.227.

Lead evaluation, abatement work; establishment of certification and training program, C.26:2Q-1 et al., Ch.288.

Local health officer, simultaneous performance of other functions, holding other titles; permitted, amends C.26:3A2-3 et al., Ch.64.

"Long Term Care Week;" designated, award for County Long-Term Care Volunteer of the Year; created, C.36:2-31, Ch.61.

Nursing homes, religiously affiliated, certificate of need requirement, exempt, C.26:2H-7.3, Ch.140.

HEALTH (Continued)

“Off-label” uses for drugs, certain, payment by health insurance providers; required, C.26:1A-36.9 et al., Ch.321.

Patient's right to appeal bill, provision by Department of Health; required, Ch.63.

Pharmacy services, choice of insured; required, C.17:48-6j et al., Ch.378.

State Sanitary Code, penalties; increased, amends C.26:1A-10, Ch.55.

HIGHER EDUCATION

Thomas A. Edison State College; properties, designated, C.18A:64-21.6 et seq., Ch.116.

HIGHWAYS

“Disabled American Veterans Memorial Highway”; designated, J.R.4.

“Trooper Thomas Joseph Hanratty Section of the Lightning Division Memorial Highway,” designated, J.R.2.

HOSPITALS

Patient's right to appeal bill, provision by Department of Health; required, Ch.63.

St. Joseph Hospital and Medical Center, acute care children's hospital; designated, C.26:2H-18e, Ch.374.

HOUSING

Construction Code:

Private agency inspection fees; limited, amends C.52:27D-124, Ch.47.

Subcodes, adoption timetable; established, amends C.52:27D-123, Ch.306.

“Fair Housing Act,” method of certifying credit; amends C.52:27D-307, Ch.104.

Housing authorities, local, laws concerning employees; revised, C.40A:12A-18.1, amends C.40A:12A-17 et seq., Ch.344.

Municipal fair share obligations, changed, amends C.52:27D-307, repeals C.52:27D-323, Ch.31.

Municipal loan programs, certain; exempt from licensure under “Secondary Mortgage Loan Act,” amends C.17:11A-36, Ch.207.

Seasonal rental landlords, certain, bond required; municipalities, certain, C.40:48-2.12n et seq., Ch.127.

HUMAN SERVICES

“Adult Protective Services Act,” C.52:27D-406 et seq., Ch.249.

Family preservation services, Department of Human Services; program established, C.30:4C-74 et seq., Ch.157.

HUMAN SERVICES (Continued)

“Family Support Act,” C.30:6D-33 et seq., Ch.98.

Head injured persons, community residences; provided, amends C.30:11B-1 et al., Ch.329.

Medicaid Drug Utilization Review Board; established, C.30:4D-17.16 et seq., Ch.16.

Medicaid Salary Region Advisory Panel; established, Ch.196.

“Personal Assistance Services Act,” law revised, C.30:4G-16.1, amends C.30:4G-13 et seq., Ch.215.

“Pharmaceutical Assistance to the Aged and Disabled” program, rebate program; extended, amends C.30:4D-35.2 et al., repeals C.30:4D-35.5, Ch.97.

Provisional employment in State facilities pending outcome of background check, certain; permitted, amends C.30:4-3.5 et al., Ch.1.

INSURANCE

Dental service corporations, supply of administrative services only; permitted, C.17:48C-4.1, Ch.261.

Fraud prevention plans, filing by health insurers; required, C.17:33A-15, Ch.362.

Health benefits plans, individual; law revised, C.17B:27A-16.1 et seq., amends C.17B:27A-2 et al., repeals section 16 of P.L.1992, c.161, Ch.164.

Health benefits plans, small group; law revised, C.17B:27-47 et seq., amends C.17B:27A-17 et al., repeals C.17B:27A-46, Ch.162.

Health care insurance benefits provided by non-custodial parent for child, direct payment to provider, C.2A:34-23b, Ch.14.

“Health Wellness Promotion Act,” C.26:1A-36.11 et al., Ch.327.

Homeowner's, secondary residence policies, moratorium on cancellation, temporary; established, Ch.349.

Insurance holding company systems; law revised, C.17:27A-4.1 et al., amends C.17:27A-1 et al., repeals C.17:27A-9 et al., Ch. 241.

Insurance Regulatory Information System, participation; provided, C.17:23B-1 et seq., Ch.238.

Insurers; administrative supervision, C.17:51A-1 et seq., Ch.245.

Insurers, examination; law revised, C.17:23-20 et seq., repeals R.S.17:23-4 et al., Ch.236.

Legal investments in International Finance Corporation; permitted, amends C.17:2-9.3 et al., Ch.253.

Life, health insurers, capital, surplus requirements; increased, C.17B:18-67 et al., amends N.J.S.17B:23-1, repeals N.J.S.17B:18-9 et al., Ch.235.

INSURANCE (Continued)

- Local unit joint insurance funds, creation for certain purposes, issuance of bonds; permitted, C.40A:10-38.1 et seq., amends C.40A:10-36 et al., Ch.269.
- Managing general agents for insurers, licensing; provided, C.17:22C-1 et seq., Ch.237.
- Motor vehicle insurance; election of coverage; insurer, producer immunity, certain, provided, C.17:28-1.9, Ch.156.
- “New Jersey Risk Retention Act,” C.17:47A-1 et seq., Ch.240.
- “Off-label” uses for drugs, certain, payment by health insurance providers; required, C.26:1A-36.9 et al., Ch.321.
- Personal injury protection benefits, determination of need for chiropractic treatment by chiropractor; required, amends C.39:6A-13, Ch.186.
- Pharmacy services, choice of insured; required, C.17:48-6j et al., Ch.378.
- Producer-controlled insurers; transactions regulated, C.17:22D-1 et seq., Ch.239.
- Property, casualty insurers, capital, surplus requirements; increased, C.17:17-15 et seq., amends R.S.17:17-1 et al., Ch.234.
- Reinsurance intermediaries; regulated, C.17:22E-1 et seq., Ch.244.
- Reinsurance; regulated, C.17:51B-1 et seq., amends C.17:22-6.45, Ch.243.
- Securities, valuation standards, filing of statements, certain, by insurers; required, C.17:24-5.1 et al., amends N.J.S.17B:20-8 et al., Ch.242.
- Title insurance, producer license applicants, experienced, certain; exempt from licensure requirements, Ch.377.

JOINT RESOLUTIONS

- Adoption of rules of evidence dealing with exceptions to hearsay rule, by Supreme Court; authorized, J.R.3.
- “Cancer Awareness Week” in the public schools, second week of January; C.18A:40-32 and 18A:40-33, J.R.5.
- Commission to study law of divorce; created, J.R.1.
- “Disabled American Veterans Memorial Highway”; designated, J.R.4.
- New Jersey Uniform Securities Law Study Commission; created, J.R.7.
- Recreational Sports and Leisure Activities Liability Study Commission; created, J.R.8.
- “Trooper Thomas Joseph Hanratty Section of the Lightning Division Memorial Highway,” designated, J.R.2.
- “Women Veterans Awareness Month”; designated, C.36:2-32, J.R.6.

JUDGES

Removal procedure statutes, reenacted, N.J.S.2B:2A-1 et seq., Ch.142.
Superior Court, additional, amends N.J.S.2B:2-1, Chs.346, 347.

LABOR

New Jersey Summer Challenge program; \$2,500,000, Ch.167.
Record of hours worked by certain personnel, requirements;
changed, amends C.34:11-56a20, Ch.91.
"Youth Transitions to Work Partnership Act," C.34:15E-1 et al.,
amends C.34:15D-9 et al., Ch.268.

LANDLORD AND TENANT

Leases, termination by handicapped tenants, certain conditions;
permitted, amends C.46:8-9.2, Ch.208.
Zoning violations, grounds for eviction of tenants, relocation as-
sistance by landlord; provided, C.2A:18-61.1g et seq.,
amends C.2A:18-61.1 et al., Ch.342.

LIBRARIES

County libraries, certain, distribution criteria for State aid; re-
vised, amends C.18A:74-3.1, Ch.71.

MILITARY AND VETERANS

Guardianship, program to assist in appointment; established,
C.38A:3-2b2 et seq., Ch.281.
"Women Veterans Awareness Month"; designated, C.36:2-32, J.R.6.

MOTOR VEHICLES

Animal welfare license plates, issuance; fees, use, C.39:3-27.55
et seq., amends C.4:19A-5, Ch.184.
Coastal protection license plates, issuance; fees, use, C.39:3-
27.47 et seq., Ch.168.
Driver's license:
 Issuance, proof that applicant's presence in the United States
 is authorized; required, amends R.S.39:3-10 et al., Ch.34.
 Suspension, revocation for drug offense conviction; re-
 quired, C.39:5-30.12 et seq., amends R.S.39:4-50, Ch.296.
Handicapped license plates, issuance for motorcycles; permitted,
amends C.39:4-206, Ch.277.
Leasing, lessee and lessor identification; required, amends
R.S.39:1-1 et al., Ch.125.
Motor vehicle franchises, franchisees; laws revised, C.56:10-13.6
et seq., amends C.56:10-4 et al., Ch.189.

MOTOR VEHICLES (Continued)

Offenses in areas of highway construction or repair, certain; fines doubled, C.39:4-203.5, Ch.332.

School buses, child safety equipment, October, 1992 chassis manufacture; required, amends section 3 of P.L.1992, c.92, Ch.307.

Special learner's permit, hours for use; extended, amends C.39:3-13.2a, Ch.287.

Special license plates, holders of Combat Infantryman Badge; authorized, C.39:3-27.46, Ch.72.

Speed limits:

Districts, certain, 35 MPH, amends R.S.39:1-1 et al., Ch.315.

Traffic signs, municipal streets, certification, amends R.S.39:4-8, Ch.122.

Traffic control signal, sign; operation of motor vehicle on public, private property to avoid; prohibited, C.39:4-66.2, Ch.326.

Trucks, overweight, shipper liable, amends R.S.39:1-1 et al., Ch.12.

Wildlife conservation license plate, issuance; C.39:3-33.10, Ch.119.

MUNICIPALITIES

Assistant municipal administrators, appointment, townships, villages; permitted C.40A:63-7.1 et al., Ch.75.

Building restrictions, municipal governing body, waiver, certain, permitted; amends C.40:60-51.2, Ch.131.

Fair share housing obligations, changed, amends C.52:27D-307, repeals C.52:27D-323, Ch.31.

Hamburg, borough, police appointment, certain, Ch.334.

In rem tax foreclosure, title, legal costs, collection by municipality; permitted, amends C.54:5-104.59, Ch.278.

Joint insurance funds, creation for certain purposes, issuance of bonds; permitted, C.40A:10-38.1 et seq., amends C.40A:10-36 et al., Ch.269.

Kearny, land restriction; certain, remove, Ch.158.

Lambertville, city, police appointment, certain, Ch.94.

Law enforcement officers, firefighters, certain, hiring; permitted, C.40A:14-9.9, amends C.40A:14-180, Ch.187.

Lebanon, township, police appointment, certain, Ch.333.

Local budget, State aid anticipated, certain permitted, Ch.141.

Newark, council aides, salary increases; regulated, amends C.40:69A-60.5, Ch.40.

North Hanover, township, police appointment, certain, Ch.92.

Option to defer certain amounts from tax levy; provided, Ch.84.

MUNICIPALITIES (Continued)

- Parks, establishment, maintenance, raising of revenues; clarified, expanded, amends R.S.40:12-10 et al., Ch.37.
- Perth Amboy, city, fire department appointment, certain, Ch.93.
- "Safe and Secure Communities Act," C.52:17B-159 et al., amends C.2C:46-4 et al., Ch.220.
- Seasonal rental landlords, certain, bond required; municipalities, certain, C.40:48-2.12n et seq., Ch.127.
- Services or payments to qualified private communities, schedule for adoption; provided, amends C.40:67-23.3 et al., Ch.6.
- South Belmar, borough, police appointment, certain, Ch.254.
- Tax collectors, educational requirements; changed, C.40A:9-145.3a et seq., amends C.40A:9-145.2 et al., Ch.25.
- Tax exemption, abatement statutes; ordinances, certain, continued, Ch.62.
- Urban enterprise zones, additional; designated, law revised, C.52:17H-65.1, amends C.52:27H-62 et al., Ch.367.
- Vacancies on governing bodies, certain, procedure for filling; revised, amends N.J.S.40A:16-15, Ch.341.
- Welfare departments, staffing levels; authority to establish, C.44:8-117.1, Ch.305.

NURSING HOMES, ROOMING AND BOARDING HOUSES

- Licensing by municipalities for rooming, boarding houses; permitted, C.40:52-9 et seq., Ch.290.
- Security deposits, payment of interest on by residential health care facilities; required, C.26:2H-14.5 et seq., Ch.282.

PENSIONS AND RETIREMENT

- Alternate benefit program; competitive bidding of vendor, mutual funds, plan selection; broadened, C.18A:66-172.1, amends C.18A:66-168 et al., Ch.385.
- Benefits under State systems payable for entire month when retiree, beneficiary dies, amends N.J.S.18A:66-48 et al., Ch.335.
- County and county college employees, municipal employees, certain, additional benefits, certain, Ch.138.
- Investigators in office of county prosecutor, certain, transfer to Police and Firemen's Retirement System; permitted, Ch.179.
- Law enforcement officers, county, certain, health insurance paid by employer, C.40A:10-23.1, amends N.J.S.40A:10-23, Ch.300.
- Parole officers, certain, enrollment in Police and Firemen's Retirement system; time, C.43:16A-1.4 amends C.2A:154-4 et al., Ch.246.

PENSIONS AND RETIREMENT (Continued)

Pension adjustment, health care benefits, funding, certain; laws changed, C.52:14-17.38b et al., amends C.18A:66-18.1 et al., Ch.8.

Pension adjustment, post-retirement medical benefits, funding; adjusted, amends C.43:15A-24.1, Ch.182.

Police and Firemen's Retirement System:

Additional retirement benefits for certain members; provided, Ch.99.

Enrollment; expanded, State payment of additional employer contributions, certain; provided, C.43:16A-3.8 et seq., Ch.247.

Public college employees, certain, enrollment in alternate benefit program; permitted, C.18A:66-170.4, amends C.52:14-17.32, Ch.28.

Public employees of agencies, certain, additional PERS benefits; provided, agency election, Ch.181.

School, education employees, certain, additional benefits; provided, election by employer, Ch.163.

State employees, certain, additional benefits; provided, Ch.44.

State Police Retirement System:

Benefits, certain; increased, C.53:5A-8.2, amends C.53:5A-8 et seq., Ch.354.

Reclassification as surviving spouse; provided, Ch.17.

Teachers' Pension and Annuity Fund, purchase of service credit by retirees, certain; permitted, Ch.180.

Transfer of amounts from supplemental annuity to pay outstanding loans, certain PERS, TPAF; permitted, amends C.52:18A-117 et al., Ch.42.

PLANNING AND ZONING

Recycling facilities, inclusion in new multifamily housing developments; required, C.13:1E-99.13a, amends C.40:55D-38, Ch.81.

Site improvement standards, uniform, Statewide; provided, C.40:55D-40.1 et seq., Ch.32.

POLICE

Age requirement for appointment as municipal police officer, deeming individual former law enforcement officer; permitted, amends C.40A:14-127.1, Ch.319.

PROFESSIONS AND OCCUPATIONS

Architecture, builders, home improvement contractors, practices, certain; exempt, amends R.S.45:3-10, Ch.35.

PROFESSIONS AND OCCUPATIONS (Continued)

Breast cancer, preparation, physicians' delivery of informational booklet; required, C.26:2-168 et al., Ch.225.

Chiropractors, licensure of practitioners licensed in other states, standards; modified, amends C.45:9-41.10, Ch.90.

Doctors; premedical education requirements, updated, amends R.S.45:9-7, Ch.145.

Land surveyors, continuing education; required, C.45:8-35.2 et seq., Ch.39.

"Occupational Therapy Licensing Act," C.45:9-37.51 et seq., Ch.85.

Pharmacists, responsibility, drug review, certain, C.45:14-15.1 et seq., Ch.120.

Physician assistant, temporary licensure; permitted, C.45:9-27.19a, amends C.45:9-27.13 et al., Ch.337.

Physicians, information on Medicare policies, dissemination to patients; required, C.45:9-22.12 et seq., Ch.250.

Podiatrists, status as, referral to as podiatric physician; provided, amends R.S.45:5-7, Ch.185.

"Professional Counselor Licensing Act," C.45:8B-34 et seq., amends C.45:8B-9 et al., Ch.340.

"Public Adjuster's Licensing Act," C.17:22B-1 et al., Ch.66.

Real estate broker, broker-salesperson, salesperson, licensing, regulation; laws changed, C.45:15-12.3 et al., amends R.S.45:15-1 et al., repeals R.S.45:15-22, Ch.51.

State Board of Medical Examiners, membership; increased, amends R.S.45:9-1, Ch.279.

State Board of Public Movers and Warehousemen; created, amends C.45:14D-2 et al., repeals C.45:14D-5, Ch.365.

PUBLIC CONTRACTS

State transportation contracts, bidding requirements, procedure for determining proposal bond amounts; changed, amends R.S.27:7-31 et al., Ch.313.

PUBLIC EMPLOYEES

Leave of absence for Tuskegee Airmen conventions; permitted, amends R.S.38:23-2, Ch.79.

Voluntary furlough program for State employees; establishment, C.11A:6-1.1, Ch.297.

PUBLIC UTILITIES

Telephones, use to deliver recorded commercial messages, certain; prohibited, C.48:17-27 et seq., Ch.252.

REAL PROPERTY

Real estate developments, planned, administration, management; regulated, C.45:22A-43 et seq., amends C.45:22A-23, Ch.30.

RECREATION

Campground facilities, proprietary; regulated, C.45:22A-49 et seq., amends C.45:22A-24 et al., Ch.258.

State parks, forests, admission fees, New Jersey National Guard; exempt, C.13:1L-12, Ch.304.

RELIGION

Coptic Orthodox Church, incorporation, management, C.16:20-1 et seq., Ch.148.

REORGANIZATION PLANS

Human Services, Department, transfer of certain functions of Division of Juvenile Services to, No.001-1993.

SCHOOLS

"Adopt a School Program," C.18A:54E-1 et seq., Ch.314.

Bonds, authorization; procedures, revised, amends N.J.S.18A:24-18 et al., Ch.146.

Budget; format revised, amends N.J.S.18A:22-8, Ch.117.

Budgets, requirement for approval of separate tax levies for current expenses and capital outlays; removed, amends C.18A:7D-3 et al., repeals C.18A:22-8.4 et seq., Ch.83.

"Cancer Awareness Week" in the public schools, second week of January; C.18A:40-32 and 18A:40-33, J.R.5.

Contracts, retainage, agreement; required, amends C.18A:18A-40.3, Ch.18.

Free balances in excess of 7.5% of budget, appropriation for purpose of budget; provided, C.18A:7D-27.1. amends C.18A:7D-4 et al., Ch.80.

Limited purpose regional school district, dissolution procedure; provided, amends C.18A:13-51 et al., Ch.255.

Medications, certain, self-administration by pupil; permitted, C.18A:40-12.3 et seq., Ch.308.

New Jersey Council of County Vocational Schools; established, C.18A:54-38 et seq., Ch.302.

Nontenured teaching staff members, completion date for evaluations; changed, amends C.18A:27-3.1 et al., Ch.100.

"Public School Capital Finance Assistance Act," C.34:1B-7.20 et al., amends C.34:1B-7.13, Ch.102.

"Public School Reform Act of 1992," amends N.J.S.18A:66-33 et al., Ch.7.

SCHOOLS (Continued)

Regional districts, allocation of costs; changed, incentives for regionalization; provided C.18A:7D-37 et al., amends N.J.S.18A:13-23 et al., Ch.67.

School buses, child safety equipment, October, 1992 chassis manufacture; required, amends section 3 of P.L.1992, c.92, Ch.307.

Sending-receiving relationships between districts, certain; termination, C.18A:38-21.1, Ch.384.

State operated school district, election of school board members, date; changed, Ch.59.

Student removal for nonresidency, board of education authority; increased, amends N.J.S.18A:38-1, Ch.380.

SENIOR CITIZENS

Senior Health Insurance Counseling Program; established, C.52:27D-29.32 et al., repeals C.30:4H-1 et seq., Ch.4.

SEWERAGE

Passaic Valley Sewerage Commission, interest on late charges; established, amends C.58:14-34.20, Ch.54.

Passaic Valley sewerage district, boundaries, altered, extended, C.58:14-1.10, Ch.53.

STATE GOVERNMENT

Annual reports on operation, effectiveness of Tort Claims Act, law requiring; repealed, repeals N.J.S.59:14-1, Ch.316.

Green acres land, conveyance; additional requirements, C.13:1D-51 et seq., amends C.13:1L-8 et al., Ch.38.

Independent counsel to investigate State aid awarded to Township of Lyndhurst, appointment; authorized, Ch.357.

New Jersey Council of Economic Advisors, established; C.52:9H-34 et seq., repeals C.52:18A-125 et al., Ch.149.

New Jersey Information Resources Management Commission; created, C.52:9XX-1 et seq., Ch.199.

STATUTES

Special legislation, local, notice of ordinance, resolution; seven days, amends C.1:6-10, Ch.93.

TAXATION

Board membership, increased, counties, certain, amends R.S.54:3-2, Ch.129.

“Business Personal Property Tax Act,” repealed, repeals C.54:11A-1 et al., Ch.174.

TAXATION (Continued)**Corporation business tax:**

Credit for research activities; provided, C.54:10A-5.24, Ch.175.

Federal modified accelerated depreciation; use permitted, amends C.54:10A-4, Ch.172.

Corporations, insurance, certain, exemption from Corporation Business Tax Act (1945); provided, amends C.54:10A-3, Ch.338.

"Financial Business Tax Law (1946)," repealed, repeals C.54:10B-1 et seq., Ch.295.

Gambling winnings, nonresidents, taxable as gross income, amends N.J.S.54A:5-8, Ch.143.

Gross income tax liability, nonresident taxpayers; computation, C.54A:2-1.1, amends N.J.S.54A:3-1 et al., repeals N.J.S.54A:5-5, Ch.178; method; changed, C.54A:2-1.2, amends N.J.S.54A:3-1 et al., Ch.320.

In rem tax foreclosure, title, legal costs, collection by municipality; permitted, amends C.54:5-104.59, Ch.278.

"Manufacturing Equipment and Employment Investment Tax Credit Act," C.54:10A-5.16 et seq., Ch.171.

"New Jersey Urban Enterprise Zones Act," revenue provision; clarified, amends C.52:27H-80, Ch.144.

"New Jobs Investment Tax Credit Act," C.54:10A-5.4 et seq., Ch.170.

Penalties, interest rates for late payment, calculation method; changed, amends R.S.54:49-3 et al., Ch.331.

Property, realty, exempt; nonprofit health care for elderly, amends R.S.54:4-3.6, Ch.166.

Property taxation, exemption for single-use agricultural or horticultural facilities; provided, amends C.54:4-23.12, Ch.251.

Race horses, sale through claiming races, limitation on sales tax; provided, C.54:32B-7.1, Ch.226.

"Revaluation Relief Act of 1993," C.54:1-35.39 et al., Ch.101.

Ride-sharing:

Employee tax incentives, C.54A:6-23, amends N.J.S.54A:7-2, Ch.108.

Programs; employer tax incentives, provided; C.27:26A-15, Ch.150.

Sales and Use Tax, transient vendors; registration, C.40:52-1.3, amends C.54:32B-15, Ch.274.

Sales tax, coin operated phones, local calls, exemption, amends C.54:32B-2 et al., Ch.10.

Sales tax rate, counties, certain, one-half, C.54:32B-8.45, Ch.373.

TAXATION (Continued)

Subchapter S corporations; taxation revised, C.54:10A-5.22 et al., amends C.54:10A-4 et al., Ch.173.

Tax sale certificates, acceptance of bonds, notes, other obligations as consideration for private sale; authorized, C.54:5-113.1 et al., amends R.S.54:5-113, Ch.113; sale, assignment; authorized, C.54:5-113.3 et seq., amends C.54:5-113.1 et al., Ch.325.

TRANSPORTATION

Bus inspection fees, certain, increased; rail car transporting hazardous substances, fee collected by DOT; C.48:2-56.1 et al., amends C.48:2-56, Ch.124.

Department, lease of Houdaille Quarry to Union County; required, Ch.22.

General Aviation Study Commission; established, Ch.336.

New Jersey Railroad and Transportation Museum Commission; created, C.52:16A-43 et seq., repeals P.L.1987, c.41 et al., Ch.209.

Park-and-ride lots, authority of Department of Transportation; provided, C.27:1A-5.13 et seq., amends C.27:7-21.4, Ch.231.

UNEMPLOYMENT COMPENSATION

Lump sum payments, recipients, certain, benefits not reduced, amends C.43:21-5a, Ch.330.

Travel agents, outside, certain; exemption from unemployment, temporary disability contributions, amends R.S.43:21-19, Ch.312.

VALIDATING ACTS

School district bonds, Chs.41, 86, 151, 183, 289, 294.

WATER SUPPLY

Cleanup, removal costs, immunity, limited, additional; provided, petroleum dischargers, certain, amends C.58:10-23.11g3, Ch.382.

Service contracts, long term, between private firms and municipalities, certain; authorized, C.58:28-1 et seq., Ch.381.

Stream-cleaning activities, certain, by counties, municipalities; allowed, notification, certification; required, C.58:16A-67, Ch.376.

"Water Supply Management Act"; revised, designation of critical water supply concerns areas; permitted, C.58:1A-7.3 et al., amends C.58:1A-6 et al., Ch.202.

WELFARE

Municipal departments, staffing levels; authority to establish, C.44:8-117.1, Ch.305.

WORKERS' COMPENSATION

"New Jersey Self Insurers Guaranty Association," created, C.34:15-120.15 et seq., Ch.107.