

**ACTS**  
OF THE  
**First Annual Session**  
OF THE  
**Two Hundred and Sixth Legislature**  
OF THE  
STATE OF NEW JERSEY  
AND  
**Thirty-Sixth Under the New Constitution**



1994

**New Jersey State Library**



## CHAPTER 74

AN ACT exempting from workers' compensation certain employees who are eligible for compensation under federal law and amending R.S.34:15-36.

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

1. R.S.34:15-36 is amended to read as follows:

**Definitions.**

34:15-36. "Willful negligence" within the intent of this chapter shall consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication, operating as the proximate cause of injury, or (4) unlawful use of a controlled dangerous substance as defined in the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c.226 (C.24:21-1 et seq.).

"Employer" is declared to be synonymous with master, and includes natural persons, partnerships, and corporations; "employee" is synonymous with servant, and includes all natural persons, including officers of corporations, who perform service for an employer for financial consideration, exclusive of (1) employees eligible under the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. §901 et seq.), for benefits payable with respect to accidental death or injury, or occupational disease or infection; and (2) casual employments, which shall be defined, if in connection with the employer's business, as employment the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic or recurring; provided, however, that forest fire wardens and forest firefighters employed by the State of New Jersey shall, in no event, be deemed casual employees.

Employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer; provided, however, when the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer; but the employment of employee paid travel time by an employer for

time spent traveling to and from a job site or of any employee who utilizes an employer authorized vehicle shall commence and terminate with the time spent traveling to and from a job site or the authorized operation of a vehicle on business authorized by the employer. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in responding to and returning from an emergency, shall be deemed to be in the course of employment.

Employment shall also be deemed to commence when an employee is traveling in a ridesharing arrangement between his or her place of residence or terminal near such place and his or her place of employment, if one of the following conditions is satisfied: the vehicle used in the ridesharing arrangement is owned, leased or contracted for by the employer, or the employee is required by the employer to travel in a ridesharing arrangement as a condition of employment.

“Disability permanent in quality and partial in character” means a permanent impairment caused by a compensable accident or compensable occupational disease, based upon demonstrable objective medical evidence, which restricts the function of the body or of its members or organs; included in the criteria which shall be considered shall be whether there has been a lessening to a material degree of an employee’s working ability. Subject to the above provisions, nothing in this definition shall be construed to preclude benefits to a worker who returns to work following a compensable accident even if there be no reduction in earnings. Injuries such as minor lacerations, minor contusions, minor sprains, and scars which do not constitute significant permanent disfigurement, and occupational disease of a minor nature such as mild dermatitis and mild bronchitis shall not constitute permanent disability within the meaning of this definition.

“Disability permanent in quality and total in character” means a physical or neuropsychiatric total permanent impairment caused by a compensable accident or compensable occupational disease, where no fundamental or marked improvement in such condition can be reasonably expected.

Factors other than physical and neuropsychiatric impairments may be considered in the determination of permanent total disability, where such physical and neuropsychiatric impairments constitute at least 75% or higher of total disability.

“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. This term shall include such ridesharing arrangements known as carpools and vanpools.

"Medical services, medical treatment, physicians' services and physicians' treatment" shall include, but not be limited to, the services which a chiropractor is authorized by law to perform and which are authorized by an employer pursuant to the provisions of R.S.34:15-1 et seq.

2. This act shall take effect immediately.

Approved July 22, 1994.

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## CHAPTER 75

AN ACT concerning the hours of operation of the tax collector's office and amending N.J.S.40A:9-141.

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

1. N.J.S.40A:9-141 is amended to read as follows:

**Appointment of tax collector; compensation; work hours.**

40A:9-141. Notwithstanding any other law the governing body or chief executive, as shall be appropriate to the form of government of the municipality, by ordinance, shall provide for the appointment of a municipal tax collector and the compensation of the tax collector shall be fixed in the manner otherwise provided by law. The governing body may, by ordinance, set appropriate hours of operation of the tax collector's office and the work hours of the tax collector, commensurate with the compensation paid to the tax collector, and all personnel assigned to the tax collector's office. The office of municipal tax collector and municipal treasurer, or municipal clerk may be held by the same person.

2. This act shall take effect immediately.

Approved July 22, 1994.

## CHAPTER 76

AN ACT permitting county improvement authorities to provide services in counties which have not created a county improvement authority, 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.1960, c.183 (C.40:37A-45) is amended to read as follows:

**C.40:37A-45 Definitions.**

2. As used in this act, unless a different meaning clearly appears from the context:

- (a) "Authority" shall mean a public body created pursuant to this act;
- (b) "Bond resolution" shall have the meaning ascribed thereto in section 17 of P.L.1960, c.183 (C.40:37A-60);
- (c) "Bonds" shall mean bonds, notes or other obligations issued pursuant to this act;
- (d) "Construct" and "construction" shall connote and include acts of clearance, demolition, construction, development or redevelopment, reconstruction, replacement, extension, improvement and betterment;
- (e) "Cost" shall mean, in addition to the usual connotations thereof, the cost of planning, acquisition or construction of all or any part of any public facility or facilities of an authority and of all or any property, rights, easements, privileges, agreements and franchises deemed by the authority to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, cost of issuance of bonds, architectural, engineering and inspection costs and legal expenses, cost of financial, professional and other estimates and advice, organization, administrative, operating and other expenses of the authority prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of such public facility or facilities or part thereof and the placing of the same fully in operation or the disposition of the same, and also such provision or reserves for working capital, operating, maintenance or replacement expenses or for payment or security of principal or of interest on bonds during or after such acquisition or construction as the authority may determine, and also reimbursements to the

authority or any governmental unit or person of any moneys theretofore expended for the purposes of the authority;

(f) The term "county" shall mean any county of any class of the State and shall include, without limitation, the terms "the county" and "beneficiary county" defined in this act, and the term "the county" shall mean the county which created an authority pursuant to this act;

(g) "Development project" shall mean any lands, structures, or property or facilities acquired or constructed or to be acquired or constructed by an authority for the purposes of the authority described in subsection (e) of section 11 of P.L.1960, c.183 (C.40:37A-54);

(h) "Facility charges" shall have the meaning ascribed to said term in section 14 of P.L.1960, c.183 (C.40:37A-57);

(i) "Facility revenues" shall have the meaning ascribed to said term in subsection (e) of section 20 of P.L.1960, c.183 (C.40:37A-63);

(j) "Governing body" shall mean, in the case of a county, the board of chosen freeholders, or in the case of a county operating under article 3 or 5 of the "Optional County Charter Law" (P.L.1972, c.154; C.40:41A-1 et seq.) as defined thereunder, and, in the case of a municipality, the commission, council, board or body, by whatever name it may be known, having charge of the finances of the municipality;

(k) "Governmental unit" shall mean the United States of America or the State or any county or municipality or any subdivision, department, agency, or instrumentality heretofore or hereafter created, designated or established by or for the United States of America or the State or any county or municipality;

(l) "Local bond law" shall mean chapter 2 of Title 40A, Municipalities and Counties, of the New Jersey Statutes (N.J.S.) as amended and supplemented;

(m) "Municipality" shall mean any city, borough, village, town, or township of the State but not a county or a school district;

(n) "Person" shall mean any person, partnership, association, corporation or entity other than a nation, state, county or municipality or any subdivision, department, agency or instrumentality thereof;

(o) "Project" shall have the meaning ascribed to said term in section 17 of P.L.1960, c.183 (C.40:37A-60);

(p) "Public facility" shall mean any lands, structures, franchises, equipment, or other property or facilities acquired, constructed, owned, financed, or leased by the authority or any other governmen-

tal unit or person to accomplish any of the purposes of an authority authorized by section 11 of P.L.1960, c.183 (C.40:37A-54);

(q) "Real property" shall mean lands within or without the State, above or below water, and improvements thereof or thereon, or any riparian or other rights or interests therein;

(r) "Garbage and solid waste disposal system" shall mean the plants, structures and other real and personal property acquired, constructed or operated or to be acquired, constructed or operated by a county improvement authority, including incinerators, sanitary landfill facilities or other plants for the treatment and disposal of garbage, solid waste and refuse matter and all other real and personal property and rights therein and appurtenances necessary or useful and convenient for the collection and treatment or disposal in a sanitary manner of garbage, solid waste and refuse matter (but not including sewage);

(s) "Garbage, solid waste or refuse matter" shall mean garbage, refuse and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including sludge, chemical waste, hazardous wastes and liquids, except for liquids which are treated in public sewage treatment plants and except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms;

(t) "Blighted, deteriorated or deteriorating area" may include an area determined heretofore by the municipality to be blighted in accordance with the provisions of P.L.1949, c.187, repealed by P.L.1992, c.79 (C.40:55-21.1 et seq.) and, in addition, areas which are determined by the municipality, pursuant to the same procedures as provided in said law, to be blighted, deteriorated or deteriorating because of structures or improvements which are dilapidated or characterized by disrepair, lack of ventilation or light or sanitary facilities, faulty arrangement, location, or design, or other unhealthful or unsafe conditions;

(u) "Redevelopment" may include planning, replanning, conservation, rehabilitation, clearance, development and redevelopment; and the construction and rehabilitation and provision for construction and rehabilitation of residential, commercial, industrial, public or other structures and the grant or dedication or rededication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes including recreational and other facilities incidental or

appurtenant thereto, in accordance with a redevelopment plan approved by the governing body of a municipality;

(v) "Redevelopment plan" shall mean a plan as it exists from time to time for the redevelopment of all or any part of a redevelopment area, which plan shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, conservation or rehabilitation as may be proposed to be carried out in the area of the project, zoning and planning changes, if any, land uses, maximum densities, building requirements, the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements and provision for relocation of any residents and occupants to be displaced in a manner which has been or is likely to be approved by the Department of Community Affairs pursuant to the "Relocation Assistance Law of 1967," P.L.1967, c.79 (C.52:31B-1 et seq.) and the "Relocation Assistance Act," P.L.1971, c.362 (C.20:4-1 et seq.) and rules and regulations pursuant thereto;

(w) "Redevelopment project" shall mean any undertakings and activities for the elimination, and for the prevention of the development or spread, of blighted, deteriorated, or deteriorating areas and may involve any work or undertaking pursuant to a redevelopment plan; such undertaking may include: (1) acquisition of real property and demolition, removal or rehabilitation of buildings and improvements thereon; (2) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements; and (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds or other improvements necessary for carrying out the objectives of the redevelopment project;

(x) "Redeveloper" shall mean any person or governmental unit that shall enter into or propose to enter into a contract with an authority for the redevelopment of an area or any part thereof under the provisions of this act;

(y) "Redevelopment area" shall mean an area of a municipality which the governing body thereof finds is a blighted area or an area in need of rehabilitation whose redevelopment is necessary to effectuate the public purposes declared in this act. A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part;

(z) "Sludge" shall mean any solid, semisolid, or liquid waste generated from a municipal, industrial or other sewage treatment plant, water supply treatment plant, or air pollution control facility, or any other such waste having similar characteristics and effects, but shall not include effluent; and

(aa) "Beneficiary county" shall mean any county that has not created an authority pursuant to this act.

2. Section 1 of P.L.1962, c.224 (C.40:37A-47.1) is amended to read as follows:

**C.40:37A-47.1 Legislative determination.**

1. It is hereby found and declared: (a) that there are located within this State various federal installations comprising substantial tracts of land including, in many cases, buildings and other improvements thereon; (b) that, as the defense and other requirements and plans of the federal government continue to change and develop, large areas of such lands are liable to become surplus to the needs of the federal government and it is probable that such surplus areas will from time to time be disposed of by the federal government and become available for other use and development; (c) that, unless developed or redeveloped in the public interest on a comprehensive basis and under appropriate controls, any such surplus land, when so disposed of by the federal government, will constitute or be in danger of becoming a blighted area which will impair economic values and tax revenues, result in increased unemployment, and cause an increase in and spread of poverty, disease and crime, and accordingly be a menace to the health, safety, morals and welfare of residents of this State necessitating excessive and disproportionate expenditure of public funds for relief, crime prevention and punishment, public health and safety, and other public services and facilities; (d) that the several counties of this State, by means and through the agency of or services provided by a county improvement authority, are best qualified and able to provide for public acquisition of such surplus lands and accordingly the orderly development and redevelopment thereof in the public interest in order to remove or prevent the conditions hereinabove recited and to encourage industrial, commercial, residential or other proper uses of such lands or restore or increase employment opportunities for residents of this State; and (e) that the acquisition of such surplus lands and development or redevelopment thereof as aforesaid are public uses and purposes for which

public funds may be expended and private property taken or acquired, and are governmental functions of State concern. The necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

3. Section 9 of P.L.1960, c.183 (C.40:37A-52) is amended to read as follows:

**C.40:37A-52 Ex officio member.**

9. No member of the governing body of the county or any existing or potential beneficiary county shall be appointed as a member of, or employed by, an authority; but the governing body of the county may, by ordinance or resolution, as appropriate, provide that, in addition to the members appointed pursuant to section 5 of P.L.1960, c.183 (C.40:37A-48), the county executive in the case of a county having adopted article 3 of the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-31 et seq.), the county supervisor in the case of a county having adopted article 5 of that act (C.40:41A-59 et seq.), or the president of the board of chosen freeholders in case the county is any other type of county, shall be appointed to serve ex officio, as a non-voting member of an authority.

4. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

**C.40:37A-54 Purposes.**

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including develop-

ment and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50% of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in this act, including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acqui-



sition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of this act, as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, and (k) any combination or combinations of the foregoing.

5. Section 13 of P.L.1960, c.183 (C.40:37A-56) is amended to read as follows:

**C.40:37A-56 Report to governing body; powers limited.**

13. (1) Whenever an authority after investigation and study shall plan to undertake any public facility or facilities (other than a development project or redevelopment project) for the purposes of the authority, the authority shall make to the governing body of the county and if the public facility or facilities (including a development project or redevelopment project) benefit any beneficiary county, to the governing body of any such beneficiary county a detailed report dealing with the proposed public facility or facilities. Notwithstanding any other provision of this act, the authority shall not construct or acquire such public facility or facilities (other than a development project or redevelopment project within the county which created the authority), or make any lease or other agreement relating to use by any governmental unit or person of all or any part of any such public facility or facilities for a term in excess of five years, until there has been filed with the authority a copy of a resolution adopted by the governing body of the county and, if applicable, by any beneficiary county, certified by its clerk, describing such public facility or facilities in terms sufficient for reasonable identification and consenting to the construction or acquisition thereof by the authority or the making of such leases or other agreements.

(2) Unless otherwise required by any agreement of the authority with holders of its bonds, no authority shall sell any part of a development project or make any lease or other agreement relating to use by any governmental unit or person of said part for a term in excess of five years (A) Until the Commissioner of Community Affairs (hereinafter called the "commissioner") has

approved a plan (hereinafter called, with respect to such part, the "development plan") prepared by the authority which provides an outline for the development of said part sufficient, in the opinion of the commissioner: (i) to indicate its relationship to appropriate land uses in the area and proper traffic, public transportation, public utility, recreational and community facilities, and other public improvements, (ii) to indicate proposed land uses and building requirements and restrictions in said part, and (iii) to provide reasonable assurance that said part will not be in danger of becoming a blighted area and will be developed in a manner reasonably designed in the public interest to encourage industrial, commercial, residential or other proper uses thereof or restore or increase employment opportunities for residents of the State; or (B) Unless such sale, lease or other agreement, in the opinion of the authority, is necessary or desirable in order to effectuate and carry out the said development plan.

(3) Every authority shall have power, subject to the provisions of subsection (2) of this section, to sell or otherwise dispose of all or any part of any development project or to lease the same to any governmental unit or person or make agreement of any kind with any governmental unit or person for the use or operation thereof, for such consideration and for such period or periods of time and upon such other terms and conditions as it may fix and agree upon. In the exercise of such power, the authority may make any land or structure in the development project available for use by private enterprise or governmental units in accordance with the development plan at its use value, being the value (whether expressed in terms of rental or capital price) at which the authority determines such land or structure should be made available in order that it may be developed or used for the purpose or purposes specified in such plan. In order to assure that land or other property included in the development project is developed or used in accordance with the development plan, the authority, upon the sale, lease or other disposition of such land or property, shall obligate purchasers, lessees or other users: (A) to use the land or property for the purpose designated in such plan, (B) to begin the building or installation of their improvements or other property (if any), and to complete the same, within such periods of time as the authority may fix as reasonable, and (C) to comply with such other conditions as are necessary or desirable to carry out the purposes stated in this act. Any such obligations imposed on a

purchaser of land shall be covenants and conditions running with the land where the authority so stipulates.

6. Section 19 of P.L.1960, c.183 (C.40:37A-62) is amended to read as follows:

**C.40:37A-62 Filing copy of bond resolution; publication; effect.**

19. An authority shall cause a copy of any bond resolution adopted by it to be filed for public inspection in its office and in the office of the clerk of the governing body of the county, and if the public facility financed by such bond resolution benefits a beneficiary county, in the office of the clerk of the governing body of the beneficiary county, and may thereupon cause to be published at least once in a newspaper published or circulating in the county, and if applicable, any beneficiary county, a notice stating the fact and date of such adoption and the places where such bond resolution has been so filed for public inspection and also the date of the first publication of such notice and also stating that any action or proceeding of any kind or nature in any court questioning the validity or proper authorization of bonds provided for by the bond resolution, or the validity of any covenants, agreements or contracts provided for by the bond resolution shall be commenced within 20 days after the first publication of such notice. If any such notice shall at any time be published and if no action or proceeding questioning the validity or proper authorization of bonds provided for by the bond resolution referred to in said notice, or the validity of any covenants, agreements or contracts provided for by said bond resolution shall be commenced or instituted within 20 days after the first publication of said notice, then all residents and taxpayers and owners of property in the county and, if applicable, any beneficiary county and all other persons shall be forever barred and foreclosed from instituting or commencing any action or proceeding in any court, or from pleading any defense to any action or proceeding, questioning the validity or proper authorization of such bonds, or the validity of such covenants, agreements or contracts, and said bonds, covenants, agreements and contracts shall be conclusively deemed to be valid and binding obligations in accordance with their terms and tenor.

7. Section 26 of P.L.1960, c.183 (C.40:37A-69) is amended to read as follows:

**C.40:37A-69 Eminent domain.**

26. Every authority is hereby empowered, in its own name but for the county or any beneficiary county, to acquire by purchase, gift, grant or devise and to take for public use real property, within or without the county or any beneficiary county, or any interest therein which may be deemed by the authority necessary for its purposes, including public lands owned by or in which any municipality within the county or any beneficiary county has a right, title or interest. Such authority is hereby empowered to acquire and take such real property including such public property or interests therein, by condemnation, in the manner provided for in the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) and, to that end, may invoke and exercise in the manner or mode of procedure prescribed in that act, either in its own name or in the name of the county or any beneficiary county, all of the powers of such county to acquire or take property for public use; provided, however, that, notwithstanding the foregoing or any other provision of this act, no authority shall take, by condemnation, any real property except upon consent thereto by the county which created the authority or, if applicable, any beneficiary county given by resolution adopted by its governing body and further provided, in the case of authorities operating a public transportation facility, every taking by condemnation in connection with such powers, shall be subject to the provisions of sections 48, 49 and 63 of P.L.1962, c.198 (C.48:3-17.6 to 48:3-17.8).

8. Section 33 of P.L.1960, c.183 (C.40:37A-76) is amended to read as follows:

**C.40:37A-76 Actions by municipalities or county.**

33. For the purpose of aiding an authority and co-operating in the planning, undertaking, acquisition, construction or operation of any public facility, the county or any beneficiary county or any municipality in any such county may (a) acquire real property in its name for such public facility or for the widening of existing roads, streets, parkways, avenues or highways or for new roads, streets, parkways, avenues or highways to any such public facility, or partly for such purposes and partly for other county or municipal purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by such county or municipality, (b) furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan parks, streets, roads, road-

ways, alleys, sidewalks or other places which it is otherwise empowered to undertake, and (c) do any and all things necessary or convenient to aid and co-operate in the planning, undertaking, construction or operation of any such public facility, and cause services to be furnished to the authority of any character which such county or municipality is otherwise empowered to furnish, and to incur the entire expense thereof.

9. Section 36 of P.L.1960, c.183 (C.40:37A-79) is amended to read as follows:

**C.40:37A-79 Appropriations by county or municipality.**

36. For the purpose of aiding an authority and co-operating in the planning, undertaking, acquisition, construction or operation of any public facility, the county or any beneficiary county by resolution of its governing body, or any municipality in the county or beneficiary county by ordinance of its governing body, shall have power from time to time and for such period and upon such terms, with or without consideration, as may be provided by such resolution or ordinance and accepted by the authority (a) to appropriate moneys for the purposes of the authority, and to loan or donate such money to the authority in such installments and upon such terms as may be agreed upon with the authority, (b) to covenant and agree with the authority to pay to or on the order of the authority annually or at shorter intervals as a subsidy for the promotion of its purposes not exceeding such sums of money as may be stated in such resolution or ordinance or computed in accordance therewith, (c) upon authorization by it in accordance with law of the performance of any act or thing which it is empowered by law to authorize and perform and after appropriation of the moneys (if any) necessary for such performance, to covenant and agree with the authority to do and perform such act or thing and as to the time, manner and other details of its doing and performance, and (d) to appropriate money for all or any part of the cost of acquisition or construction of such public facility, and, in accordance with the limitations and any exceptions thereto and in the manner or mode of procedure prescribed by the local bond law to incur indebtedness, borrow money and issue its negotiable bonds for the purpose of financing such public facility and appropriation, and to pay the proceeds of such bonds to the authority.

10. Section 37 of P.L.1960, c.183 (C.40:37A-80) is amended to read as follows:

**C.40:37A-80 Guaranty of bonds.**

37. For the purpose of aiding an authority in the planning, undertaking, acquisition, construction, financing or operation of any facility which the authority is authorized to undertake pursuant to section 11 of P.L.1960, c.183 (C.40:37A-54), the county or any beneficiary county may, pursuant to resolution duly adopted by its governing body, or any municipality in the county or beneficiary county may, by ordinance of its governing body, in the manner provided for adoption of a bond ordinance as provided in the local bond law and with or without consideration and upon such terms and conditions as may be agreed to by and between the county or beneficiary county or the municipality and the authority, unconditionally guarantee the punctual payment of the principal of and interest on any bonds of the authority. Any guaranty of bonds of an authority made pursuant to this section shall be evidenced by endorsement thereof on such bonds, executed in the name of the county or beneficiary county or the municipality and on its behalf by such officer thereof as may be designated in the resolution or ordinance authorizing such guaranty, and such county or municipality shall thereupon and thereafter be obligated to pay the principal of and interest on said bonds in the same manner and to the same extent as in the case of bonds issued by it. Any such guaranty of bonds of an authority may be made, and any resolution authorizing such guaranty may be adopted, notwithstanding any statutory debt or other limitations, including particularly any limitation or requirement under or pursuant to the local bond law, but the principal amount of bonds so guaranteed, shall, after their issuance, be included in the gross debt of such county or municipality for the purpose of determining the indebtedness of such county or municipality under or pursuant to the local bond law. The principal amount of said bonds so guaranteed and included in gross debt shall be deducted and is hereby declared to be and to constitute a deduction from such gross debt under and for all the purposes of said local bond law (a) from and after the time of issuance of said bonds until the end of the fiscal year beginning next after the completion of acquisition or construction of the facility to be financed from the proceeds of such bonds and (b) in any annual debt statement filed pursuant to said local bond law as of the end of said fiscal year or any subsequent fiscal year if the revenues or other receipts or moneys of the authority in such year are sufficient to pay its expenses of operation and maintenance in such year and all amounts payable in such year on account of the principal and interest

on all such guaranteed bonds, all bonds of any such county or any municipality issued as provided in section 36 of P.L.1960, c.183 (C.40:37A-79), and all bonds of the authority issued under this act.

11. Section 47 of P.L.1960, c.183 (C.40:37A-90) is amended to read as follows:

**C.40:37A-90 Construction of act.**

47. This act shall be construed liberally to effectuate the legislative intent and as complete and independent authority for the performance of each and every act and thing herein authorized, and an authority shall not constitute or be deemed to be a county or municipality or agency or component of a municipality for the purposes of any other law; provided, however, that no authority, other than an authority created in or performing services for a county of the second class having a population in excess of 265,000, but less than 350,000 inhabitants, in a county of the third class having a population not in excess of 70,000 inhabitants, or in a county of the fifth class having a population in excess of 150,000, but less than 300,000 inhabitants, shall exercise the powers of a common carrier in any such county, and, except as hereinabove in this section set forth, nothing contained in this act shall in any way affect or limit the jurisdiction, rights, powers or duties of any State regulatory agencies.

12. Section 13 of P.L.1968, c.66 (C.40:37A-98) is amended to read as follows:

**C.40:37A-98 Authorization to engage in public transportation within and beyond county limits.**

13. Any county improvement authority may engage in the business of operation of public transportation facilities for the transportation of passengers and property on scheduled routes, within and beyond the territorial limits of the county or any beneficiary county, with the consent of the governing bodies of the municipalities into which such operation is extended, and on non-scheduled routes, by contract. A copy of each contract for charter or operation on a nonscheduled route shall be maintained in the office of the authority as a public record available for inspection during normal business hours.

Any county improvement authority which establishes or acquires public transportation facilities may contract with any person or corporation for the operation thereof upon such terms and conditions as the authority shall determine.

13. Section 4 of P.L.1973, c.330 (C.40:37A-101) is amended to read as follows:

**C.40:37A-101 Selection of site location for disposal system.**

4. Whenever any county improvement authority chooses to exercise the powers granted by P.L.1973, c.330 (C.40:37A-100 et al.) with respect to the selection of a site location or locations for any facility of its garbage and solid waste disposal system, it shall so inform the Commissioner of Environmental Protection, and shall make or cause to be made, after consultation with the commissioner, such preliminary surveys, investigations, studies, borings, maps, plans, drawings and estimates of costs and revenues relating to the type and location of such garbage and solid waste disposal facilities, or any part thereof, which the authority may deem necessary to purchase or construct in order to protect the health, safety and welfare of the inhabitants of the county or any beneficiary county. In addition, the authority may make or cause to be made a study and a map of all existing garbage and solid waste disposal treatment and disposal facilities proposed for or already operating in the county or any beneficiary county. The undertaking of all such studies and surveys and the provision of the necessary maps, sketches, data and plans in connection therewith, shall be deemed a county purpose and the costs thereof may be paid out of general funds of the county or beneficiary county; but all such costs shall be reimbursed to the county or any beneficiary county by the county improvement authority.

14. Section 5 of P.L.1973, c.330 (C.40:37A-102) is amended to read as follows:

**C.40:37A-102 Responsibility for selection of final site; approval required.**

5. Subject to an enabling resolution adopted by the governing body of the county which has created such an authority or by the governing body of any beneficiary county (hereinafter referred to as the host county) pursuant to P.L.1960, c.183 (C.40:37A-44 et seq.), the county improvement authority shall have the responsibility for selecting a final site location or locations for any garbage and solid waste collection, treatment or disposal facilities to be operated by said authority. The governing body of such county shall not, however, adopt any such enabling resolution until the site location or locations tentatively designated by the improvement authority shall have been approved by:



a. The Commissioner of Environmental Protection after an evaluation of all studies, surveys and plans, and any accompanying maps and data, as may be required by the commissioner pursuant to section 4 of P.L.1973, c.330 (C.40:37A-101);

b. The governing bodies of the several municipalities situate within such county, by the adoption of concurring resolutions by any combination of such municipalities with an aggregate population of at least 75% of the total population of said county, as determined by the last decennial census; and

c. The planning board of the host county, by a resolution affirming that such site location or locations are compatible with the host county's master plan, or such county planning policies as may exist.

15. Section 2 of P.L.1979, c.275 (C.40:37A-107) is amended to read as follows:

**C.40:37A-107 Definitions.**

2. As used in this act:

a. "Authority" means any public body created pursuant to the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.).

b. "Bonds, bond anticipation notes and other notes and obligations," or "bonds, bond anticipation notes or other notes or obligations" mean any bonds, notes, debentures or other evidences of financial indebtedness issued by the authority pursuant to this act.

c. "Family" means two or more persons related by blood, marriage or adoption who live or expect to live together as a single household in the same dwelling unit; provided, however, that any individual who (1) has attained retirement age as defined in section 216a of the Federal Social Security Act, or (2) is under a disability as defined in section 223 of that act, or (3) is the surviving member of a family whose other members died during occupancy of a housing project, shall be considered as a family for purposes of permitting continued occupancy of the dwelling unit occupied by such family. The authority may provide by rule or regulation that any other individual not specified in this subsection shall be considered as a family for the purpose of this subsection.

d. "Family of low and moderate income" means a family (1) whose income is too low to compete successfully in the normal rental or mutual housing market, and (2) whose gross aggregate family income does not exceed the limits established under this act.

e. "Gross aggregate family income" means the total annual income of all members of a family, from whatever source derived, including, but not limited to, pension, annuity, retirement and

social security benefits; except that the authority may, by rule or regulation, exclude therefrom: (1) such reasonable allowances for dependents, (2) such reasonable allowances for medical expenses, (3) all or any part of the earnings of any family members below the age of 18 years, or of any other family members, other than the chief wage earner, (4) such income as is not received regularly by any family member, or (5) any two or more such items.

f. "Housing project" or "project" means any work or undertaking, whether new construction or rehabilitation, which is designed for the primary purpose of providing decent, safe and sanitary dwelling units for families of low and moderate income in need of housing, including any buildings, land, equipment, facilities, or other real or personal properties, such as streets, sewers, utilities, parks, site preparation, landscaping, stores, offices, and administrative, community, health, recreational, educational and welfare facilities, all as determined by the authority to be necessary, convenient or desirable appurtenances to improve or enhance the housing project and the neighborhood or area in which the housing project is located.

g. "Municipality" means any municipality located within the county wherein the authority has been established or within any beneficiary county.

h. "Mutual housing" means a housing project operated or to be operated upon completion of construction or rehabilitation exclusively for the benefit of the families of moderate income who are entitled to occupancy by reason of ownership of stock in the qualified housing sponsor, or as a co-owner in a horizontal property regime pursuant to the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.) or as a condominium unit owner pursuant to the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.); provided, however, the authority may adopt rules and regulations permitting a reasonable percentage of space in such project to be rented for residential or for commercial use.

i. "Project cost" means the sum total of all costs incurred in the development of a housing project, which are approved by the authority as reasonable and necessary, less any and all net rents and other net revenues received from the operation of the real and personal property on the project site during construction. Costs shall include, but are not necessarily limited to: (1) cost of land acquisition and any buildings thereon, (2) cost of site preparation, demolition and development, (3) architect, engineer, legal, authority and other fees paid or payable in connection with the planning, execution and financing of the project, (4) cost of nec-

essary studies, surveys, plans and permits, (5) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction, (6) cost of construction, reconstruction, fixtures, and equipment related to the real property, (7) cost of land improvements, (8) necessary expenses in connection with initial occupancy of the project, (9) a reasonable profit or fee to the builder and developer, (10) an allowance established by the authority for working capital and contingency reserves, and reserves for any anticipated operating deficits during the first two years of occupancy, and (11) the cost of such other items, including tenant relocation, as the authority shall determine to be reasonable and necessary for the development of the project.

All project costs shall be subject to approval and audit by the authority. The authority may adopt rules and regulations specifying in detail the types and categories of costs which shall be allowable if actually incurred in the construction or reconstruction of a housing project.

j. "Qualified housing sponsor" means: (1) any housing corporation heretofore qualified under the provisions of the "Limited-Dividend Non-profit Housing Corporations or Associations Law," P.L.1949, c.184 (C.55:16-1 et seq.), repealed by P.L.1991, c.431, (2) any urban renewal corporation or association heretofore qualified under the provisions of the "Urban Renewal Corporation and Association Law of 1961," P.L.1961, c.40 (C.40:55C-40 et seq.), repealed by P.L.1991, c.431, or any urban renewal nonprofit corporation or association heretofore qualified under the provisions of the "Urban Renewal Nonprofit Corporation Law of 1965," P.L.1965, c.95 (C.40:55C-77 et seq.), repealed by P.L.1991, c.431, which has as one of its purposes the construction, rehabilitation or operation of housing projects, (3) any general corporation formed under the provisions of Title 14 of the Revised Statutes or Title 14A of the New Jersey Statutes, which has as one of its purposes the construction, rehabilitation or operation of housing projects, (4) any corporation or association organized not for profit under the provisions of Title 15 of the Revised Statutes or any other law of this State, which has as one of its purposes the construction, rehabilitation or operation of housing projects, (5) any horizontal property regime formed under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.) or any condominium formed under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), which has as one of its purposes the construction, rehabilitation or operation of housing projects, and (6) any individual, partnership, limited partnership, joint venture or other association, including a partnership, limited partnership, joint venture or associa-

tion in which the authority is a general or limited partner or participant, approved by the authority as qualified to own, construct, rehabilitate, operate, manage and maintain a housing project.

k. "Required minimum capital reserve" means the reserve amount required to be maintained in each housing finance fund under the provisions of this act.

l. "Amortized value" means for securities purchased at a premium above or a discount below par, the value as of any given date obtained by dividing the total amount of the premium or the discount at which such securities were purchased by the number of days remaining to maturity on such securities at the time of such purchase and by multiplying the amount so calculated by the number of days having passed from the date of such purchase; and (1) in the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and (2) in the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

16. Section 25 of P.L.1979, c.275 (C.40:37A-130) is amended to read as follows:

**C.40:37A-130 Annual report; audit; contents.**

25. On or before the last day of February in each year the authority shall make an annual report for the preceding calendar year to the governing body of the county and of each municipality and beneficiary county in which a housing project financed by the authority is located.

The annual audit pursuant to section 45 of the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-88) shall include the activities of the authority pursuant to this act.

17. Section 19 of P.L.1982, c.113 (C.40:37A-131.1) is amended to read as follows:

**C.40:37A-131.1 Payment in lieu of taxes not to exceed 20% of annual gross revenue; determination of assumed assessed value.**

19. a. For the purposes of the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.), where by reason of the provisions of any other law a qualified housing sponsor has entered, or intends to enter, into any agreement with any municipality to make payments in lieu of taxes, or to obtain special tax treatment of any real property of the qualified housing sponsor to be financed by the authority, that agreement may, notwithstanding any provisions of any such other law to the contrary, require the qualified housing sponsor to pay to the municipality an amount not

exceeding 20% of the annual gross revenue from each housing project situated on the real property for each year of the project's operation following its substantial completion. For the purpose of this section, "annual gross revenue" means the total annual gross rental or carrying charge and other income of a qualified housing sponsor from a housing project. Any agreement between any qualified housing sponsor and a municipality pursuant to this section shall be submitted to the authority for review in order to avoid duplicative or inconsistent regulations or provisions, and any municipality and any qualified housing sponsor may, with the approval of the authority, enter into any such agreement as is not inconsistent with P.L.1960, c.183.

b. For the purposes of apportioning the amounts to be raised in the respective municipalities in each county pursuant to R.S.54:4-49, the board of taxation for such county shall, for each municipality, include in the equalization table for such county the assumed assessed value of the property represented by the amount of payments in lieu of property taxes to any municipality pursuant to this section.

The assumed assessed value of such property in each municipality shall be determined by the county board of taxation in the following manner: (1) the amount of payments in lieu of real property taxes received by each municipality during the preceding tax year pursuant to this section shall be divided by the general tax rate of the municipality for such preceding tax year to obtain an assumed assessed value of such property; (2) this assumed assessed value shall be divided by the fraction produced by dividing the aggregate assessed value by the aggregate true value of the real property as determined by the county board of taxation for equalization purposes in the current tax year, exclusive of class II railroad property, in the municipality; (3) the resulting quotient shall be included in the net valuation of each municipality on which county taxes are apportioned.

For the first tax year during which any payments in lieu of real property taxes are made to any municipality pursuant to this section, there shall be included in the equalization table for such county the true value of the property as determined by the assessor in the tax year immediately prior to the tax year in which any payments in lieu of taxes are made pursuant to this section.

18. This act shall take effect immediately.

Approved July 22, 1994.

## CHAPTER 77

AN ACT concerning absentee ballots, paper ballots and nominating petitions 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:14-35 is amended to read as follows:

**Paper ballot; directions.**

18A:14-35. Below the rule there shall be printed on each paper ballot to be voted for candidates the following directions instructing the voter how to indicate his choice for the person for whom he may desire to vote and stating the maximum number of candidates he may vote for: "To vote for any person whose name appears on this ballot make a cross (x) or plus (+) or check (✓) mark with ink or pencil in the space or square at the left of the name of such person. To vote for any person whose name is not printed upon this ballot write with ink or pencil or paste the name in the blank space. Do not vote for more candidates than are to be elected." Below these instructions shall be printed a heavy diagram rule below which shall be printed such directions to the voter as may be necessary as "Vote for one," or "Vote for two," or a greater number, as the case may be, immediately after which shall be printed the names of the candidates duly nominated by petition as they appear signed to the certificate of acceptance in the order prescribed by law, but no candidate who has failed to file a certificate of acceptance shall have his name printed upon the ballot. The same size and style of type shall be used in printing the name of each candidate and between the name of each candidate shall be printed a heavy diagram rule and the space between each of the rules shall be exactly equal. Immediately after the space allotted to the names of candidates there shall be as many ruled blank spaces as there are members to be voted for. Immediately to the left and on the same line with the name of each candidate and blank space there shall be printed a square the same size of type in which the name of the candidate is printed, which type shall, in no case, be larger than 24 point. In case a member is to be elected for a full term, and one is to be elected to fill an unexpired term, the ballots shall designate which of the persons to be voted for is to be elected for the full term and which for the unexpired term.

2. N.J.S.18A:14-36 is amended to read as follows:

**Illustration of form of ballot.**

18A:14-36. The following is an illustration of the form of ballot:

No.....

To be torn off by the Judge of Election.

.....  
Fold to this line.

**SCHOOL ELECTION BALLOT**

Township of Webster

February 14, 1922

Polling District No. 1

John Henry Doe,

Main Street School.

Secretary

To vote for any person whose name appears on this ballot mark a cross (x) or plus (+) or check (✓) mark with ink or pencil in the place or square at the left of the name of such person.

To vote for any person whose name is not printed upon this ballot write with ink or pencil or paste the name in the blank space. Do not vote for more candidates than are to be elected.

For Membership to Board of Education.

Full Term.

Vote for three.

☐ RUTHERFORD B. FALLON

☐ WILLIAM F. SEIBEL

☐ JAMES A. STEPHENS

☐ THOMAS TEMPLETON

☐

☐

☐

For Membership to Board of Education. Unexpired

Two-Year Term.

Vote for one.

☐ HENRY JONES

☐ JOHN SMITH

☐

For Membership to Board of Education. Unexpired

One-Year Term.

Vote for one.

☐ FRANCIS R. LORRI

☐ ARTHUR H. PATTERSON

☐

using as much of the said form as may be applicable to the current school board election and extending the same to provide for cases not herein specified.

3. N.J.S.18A:14-37 is amended to read as follows:

**Questions to be voted upon.**

18A:14-37. All questions to be voted upon by paper ballots at any school election shall be placed upon the ballot immediately following the names of the candidates for election, if any, or if none, immediately following the heavy diagram rule and shall be so arranged that the voter may indicate his choice in voting for or against each of them.

There shall be printed upon each official ballot the following:

"If you are in favor of the adoption of the question printed below, make a cross (X) or plus (+) or check (✓) mark with ink or pencil in the square opposite the word "Yes." If you are opposed thereto, make a cross (X) or plus (+) or check (✓) mark in like manner in the square opposite the word "No."

	Yes.	(Question to be voted on.)
	No.	

If the voter makes a cross (X) or plus (+) or check (✓) mark in ink or pencil in the square to the left of and opposite the word "Yes," it shall be counted as a vote in favor of the proposition.

If the voter makes a cross (X) or plus (+) or check (✓) mark in ink or pencil in the square to the left of and opposite the word "No," it shall be counted as a vote against the proposition. In case no marks are made in the square to the left of and opposite either the word "Yes" or "No," it shall not be counted as a vote either for or against the proposition.

4. N.J.S.18A:14-55 is amended to read as follows:

**Marking paper ballots.**

18A:14-55. To vote for any candidates whose names are printed on the paper ballot, the voter shall mark a cross (x) or plus (+) or check (✓) mark in ink or pencil in the square at the left of the name of such candidate and to vote upon any public ques-



tion printed upon a paper ballot, the voter shall indicate his choice by making a cross (x) or plus (+) or check (✓) mark in ink or pencil in the square at the left of either the word "Yes" or "No" of such public question. Any voter who desires to vote for any person or persons whose names are not printed upon the ballot for any office to be filled at such election, may write in ink or pencil or paste under the proper title of the office the name or names of the persons so to be voted for. All pasters shall be printed with black ink on white paper.

5. R.S.19:13-4 is amended to read as follows:

**Contents of petition.**

19:13-4. Such petition shall set forth the names, places of residence and post-office addresses of the candidates for the offices to be filled, the title of the office for which each candidate is named, that the petitioners are legally qualified to vote for such candidates and pledge themselves to support and vote for the persons named in such petition and that they have not signed any other petition of nomination for the primary or for the general election for such office.

In the case of a petition or petitions nominating electors of president and vice president of the United States, the names of the candidates for president and vice president for whom such electors are to vote may be included in the petition or petitions, but the petition or petitions shall not include the names of any candidates for president or vice president who have been nominated at a convention of a political party, as defined by this title.

The petition shall also state in not more than three words the designation of the party or principles which the candidates therein named represent, but such designation shall not contain the designation name, derivative, or any part thereof as a noun or an adjective of any political party entitled to participate in the primary election.

The petition shall also include the request that the names of the candidates and their designations of party or principles be printed upon the ballots to be used at the ensuing general election.

No such petition shall undertake to nominate any candidate who has accepted the nomination for the primary for such position.

Each petition shall be arranged to contain double spacing between the signature lines of the petition, so that each signer thereof is afforded sufficient space to provide his or her printed name, address and signature.

Any form of a petition of nomination, other than petitions for federal office, which is provided to candidates by the Secretary of State, the county clerk, or the municipal clerk shall contain the following notice: "Notice: All candidates are required by law to comply with the provisions of the 'New Jersey Campaign Contributions and Expenditures Reporting Act.' For further information, please call (insert phone number of the Election Law Enforcement Commission)."

6. R.S.19:14-4 is amended to read as follows:

**Official general election ballot specification.**

19:14-4. In the center of the ballot immediately below the perforated line shall be printed in bold-faced type the words "Official general election ballot." Below these words and extending across the ballot shall appear the words: "Name of (municipality), .....ward, election district, ..... date of election, ..... John Doe, county clerk." The blank spaces shall be filled in with the name of the proper municipality, the ward and district numbers and the date of the election. The name of the county clerk shall be a facsimile of his signature. Below the last stated words extending across the ballot and at the extreme left shall be printed the words "Instructions to the voter," and immediately to the right there shall be a bracket embracing the following instructions numbered consecutively:

(1) The only kind of a mark to be made on this ballot in voting shall be a cross x, plus + or check √.

(2) To mark a cross x, plus +, check √ or when writing a name on this ballot use only ink or pencil.

(3) To vote for any candidates whose names are printed in any column, mark a cross x, plus + or check √ in the square at the left of the names of such candidates not in excess of the number to be elected to the office.

(4) To vote for any person whose name is not printed on this ballot, write or paste the name of such person under the proper title of office in the column designated personal choice and mark a cross x, plus + or check √ in the square to the left of the name so written or pasted.

(5) To vote upon any public question printed on this ballot if in favor thereof, mark a cross x, plus + or check √ in the square at the left of the word "Yes," and if opposed thereto, mark a cross x, plus + or check √ in the square at the left of the word "No."

(6) Do not mark this ballot in any other manner than above provided for and make no erasures. Should this ballot be wrongly marked,

defaced, torn or any erasure made thereon or otherwise rendered unfit for use return it and obtain another. In presidential years, the following instructions shall be printed upon the general election ballot:

(7) To vote for all the electors of any party, mark a cross x, plus + or check √ in ink or pencil in the square at the left of the surnames of the candidates for president and vice-president for whom you desire to vote.

Below the above-stated instructions and information and, except when compliance with section 19:14-15 of this Title as to State-wide propositions otherwise requires, three inches below the perforated line and parallel to it, there shall be printed a six-point diagram rule extending across the ballot to within not less than a half inch to the right and left edges of the paper.

7. R.S.19:15-27 is amended to read as follows:

**Voting.**

19:15-27. To vote for any candidates whose names are printed in any column, the voter shall mark a cross x, plus + or check √ in ink or pencil in the square at the left of the name of each candidate in any column for whom he desires to vote to the number to be elected for each office.

To vote upon the public questions printed on the ballot the voter shall indicate his choice by marking a cross x, plus + or check √ in ink or pencil in the square at the left of either the word "Yes" or "No" of each public question.

8. R.S.19:15-28 is amended to read as follows:

**Voting for personal choice.**

19:15-28. Nothing in this Title shall prevent any voter from writing or pasting under the proper title of office in the column designated personal choice the name or names of any person or persons for whom he desires to vote whose name or names are not printed upon the ballot for the same office or offices, and who shall mark a cross x, plus + or check √ in the square at the left of such name or names. Such writing shall be in ink or pencil. All pasters shall be printed with black ink on white paper.

9. R.S.19:23-7 is amended to read as follows:

**Signers; certificates of candidates.**

19:23-7. Each such petition shall set forth that the signers thereof are qualified voters of the State, congressional district,

county, or county election district, municipality, ward or election district, as the case may be, in which they reside and for which they desire to nominate candidates; that they are members of a political party (naming the same), and that they intend to affiliate with that political party at the ensuing election; that they indorse the person or persons named in their petition as candidate or candidates for nomination for the office or offices therein named, and that they request that the name of the person or persons therein mentioned be printed upon the official primary ballots of their political party as the candidate or candidates for such nomination. The petition shall further state the residence and post-office address of each person so indorsed, and shall certify that the person or persons so indorsed is or are legally qualified under the laws of this State to be nominated, and is or are a member or members of the political party named in the petition.

Accompanying the petition, each person indorsed therein shall file a certificate, stating that he is qualified for the office mentioned in the petition, that he is a member of the political party named therein, that he consents to stand as a candidate for nomination at the ensuing primary election of such political party, and that, if nominated, he consents to accept the nomination, to which shall be annexed the oath of allegiance prescribed in R.S.41:1-1, duly taken and subscribed by him before an officer authorized to take oaths in this State.

Each petition shall be arranged to contain double spacing between the signature lines of the petition, so that each signer thereof is afforded sufficient space to provide his or her printed name, address and signature.

Any form of a petition of nomination, other than petitions for federal office, which is provided to candidates by the Secretary of State, the county clerk, or the municipal clerk shall contain the following notice: "Notice: All candidates are required by law to comply with the provisions of the 'New Jersey Campaign Contributions and Expenditures Reporting Act.' For further information, please call (insert phone number of the Election Law Enforcement Commission)."

10. R.S.19:23-25 is amended to read as follows:

**Make up and printing ballot.**

19:23-25. The ballots shall be made up and printed in substantially the following form:

Each ballot shall have at the top a coupon at least two inches deep extending across the ballot above a perforated line. The

coupon shall be numbered for each of the political parties, respectively, from one consecutively to the number of ballots delivered and received by the election officers of the respective polling places. Upon the coupon and above the perforated line shall be the words "To be torn off by the judge of election. Fold to this line." Below the perforated line shall be printed the words "Official Democratic Party Primary Ballot," or "Official Republican Party Primary Ballot," or, as the case may be, naming the proper political party, as provided in this Title; below which and extending across the ballot in one or more lines, as may be necessary, shall be printed the words ..... name of municipality ..... ward ..... election district ..... date of election ..... John Doe, municipal clerk; the blank spaces shall be filled in with the name of the proper municipality, the ward and the district number and the date of election. The name of the municipal clerk shall be a facsimile of his signature. This heading shall be set apart from the body of the ballot by a heavy diagram rule. Below this rule shall be printed the following directions instructing the voter how to indicate his choice for each office and position, and for how many persons to vote for each office and position: To vote for any person whose name is printed upon this ballot mark a cross x, plus + or check ✓ with ink or pencil in the square at the left of the name of such person. To vote for any person whose name is not printed upon this ballot write or paste the name in the blank space under the proper title of office and mark a cross x, plus + or check ✓ with ink or pencil in the square at the left of the name of such person. Below these instructions shall be printed a heavy diagram rule below which shall be printed the titles of offices and positions for which candidates are to be voted for at the primary election, together with such directions to the voter as may be necessary, as "Vote for one," "Vote for two," or a greater number, as the case may be. Underneath the proper title of office and position shall be printed the names of all those persons certified as candidates for the offices to the municipal clerk by the county clerk as hereinbefore provided, and the names of persons indorsed as such candidates in petitions on file in the office of the municipal clerk as they appear signed to the certificate of acceptance. The name of any person indorsed in a petition as provided who shall fail to certify his consent and agreement to be a candidate for nomination to the office specified therein shall not be printed upon the ballots to be used at the primary election. In the case of a vacancy among

nominees the name of the person selected in the manner provided in this Title to fill same shall be printed upon the ballots in the place of the person vacating such nomination. The candidates shall be arranged in groups and the groups bracketed in all cases where the petitions indorsing such candidates request such grouping. The designation named by candidates in their petitions for nomination, as provided by this Title shall be printed to the right of the names of such candidates or groups of candidates in as large type as the space will allow. Immediately to the left and on the same line with the name of each candidate for office and position shall be printed a square approximately one-quarter of an inch in size, or by printing vertical single line rules connecting the single line rules between the names of the candidates and thus form a square in which the voter shall indicate his choice. A single light-faced rule shall be used to separate the different names in each group of candidates. A heavy diagram rule shall be used between each group of candidates for different offices. Where candidates are arranged in groups and the groups bracketed, the groups shall be separated from other groups and candidates by two single line rules approximately one-eighth of an inch apart.

Each primary ballot shall contain, at the end of the list of candidates for each different office, blank squares and spaces or lines equal to the number of persons to be elected to the office, for the purpose of allowing any voter to write or paste the name of any person for whom he desires to vote for any office or party position.

11. Section 17 of P.L.1992, c.3 (C.19:53B-8) is amended to read as follows:

**C.19:53B-8 Personal choice column provided on emergency ballots.**

17. Nothing in this amendatory and supplementary act, P.L.1992, c.3 (C.19:53B-1 et al.) shall prevent any voter from writing or pasting within the proper title of office in the column designated personal choice, the name or names of any person or persons for whom the voter desires to vote whose name or names are not printed upon the emergency ballot for the same office. The voter shall mark a cross x, plus + or check √ in the square provided for such name. The writing shall be in ink or pencil.

12. Section 8 of P.L.1953, c.211 (C.19:57-8) is amended to read as follows:

**C.19:57-8 County clerk to have ballots printed.**

8. Each county clerk shall cause to be printed sufficient military service ballots and civilian absentee ballots for each primary election for the general election, and for the general election, and there shall be furnished to the said county clerk of the county, as expeditiously as possible before the day fixed for holding any other election within the county, by the officer whose duty it shall be to provide the official ballots for such election, sufficient military service ballots and civilian absentee ballots. Along with all such ballots for all elections there shall also be furnished by such county clerk or other official, inner and outer envelopes and printed directions for the preparation and transmitting of such ballots, for use in such election within the county and all expenses of mailing such ballots shall be paid in the same manner as other expenses of said election are paid.

The absentee ballots used in counties which do not use any type of computer punch cards as absentee ballots shall be printed on paper different in color from that used for the primary or general election ballot, but in all other respects, shall be as nearly as possible facsimiles of the election ballot to be voted at such election, as prescribed by the county clerk and in conformity with the provisions of this act.

13. Section 17 of P.L.1953, c.211 (C.19:57-17) is amended to read as follows:

**C.19:57-17 Certificates of absentee voters.**

17. Upon the said margin of said flap on the envelopes to be sent to military service voters there shall be printed a certificate in the following form:

**CERTIFICATE OF MILITARY ABSENTEE VOTER**

I, ....., whose  
 (PRINT your name clearly)  
 home address is .....  
 (street address or R.D. number)  
 ....., DO HEREBY CERTIFY,  
 (municipality)

subject to the penalties for fraudulent voting, that I am voting this ballot pursuant to application previously filed. I MARKED AND SEALED THIS BALLOT AND CERTIFICATE IN SECRET. However, a family member may assist you in doing so. If you are

an incapacitated absentee voter, a person other than a family member may also assist you in doing so.

.....  
SIGNATURE of voter)

Any person providing assistance shall complete the following:

I do hereby certify that I am the person who provided assistance to this voter and declare that I will maintain the secrecy of this ballot.

.....  
(SIGNATURE of person  
providing assistance)

.....  
(PRINTED name of person  
providing assistance)

.....  
.....  
(address of person providing  
assistance)

(NOTE: MILITARY SERVICE VOTER CLAIMING MILITARY STATION AS HOME ADDRESS FOR VOTING PURPOSES MAY NOT USE MILITARY ABSENTEE BALLOT UNLESS REGISTERED TO VOTE IN THE MUNICIPALITY WHERE SUCH STATION IS LOCATED.)

Upon said margin of said flap on the inner envelopes to be sent to civilian absentee voters there shall be printed a certificate in the following form:

#### CERTIFICATE OF CIVILIAN ABSENTEE VOTER

I, ....., whose  
(PRINT your name clearly)  
home address is .....  
(street address or R.D. number)  
....., DO HEREBY CERTIFY,  
(municipality)

subject to the penalties for fraudulent voting, that I am the person who applied for the enclosed ballot. I MARKED AND SEALED



**THIS BALLOT AND CERTIFICATE IN SECRET.** However, a family member may assist you in doing so. If you are an incapacitated absentee voter, a person other than a family member may also assist you in doing so.

.....  
( SIGNATURE of voter)

Any person providing assistance shall complete the following:

I do hereby certify that I am the person who provided assistance to this voter and declare that I will maintain the secrecy of this ballot.

.....  
(SIGNATURE of person  
providing assistance)

.....  
(PRINTED name of person  
providing assistance)

.....  
.....  
(address of person providing  
assistance)

14. Section 19 of P.L.1953, c.211 (C.19:57-19) is amended to read as follows:

**C.19:57-19 Primary election absentee ballots.**

19. Upon the margin of the flap on the inner envelope forwarded with any military absentee ballot intended to be voted in any primary election for the general election, there shall be printed a certificate in the following form:

**CERTIFICATE OF MILITARY ABSENTEE VOTER**

I, ....., whose  
(PRINT your name clearly)  
home address is .....  
(street address or R.D. number)  
....., DO HEREBY CERTIFY,  
(municipality)

subject to the penalties for fraudulent voting, that I marked this ballot for the primary election of the ..... political party.  
(name of party)

I am voting this ballot pursuant to application previously filed. I MARKED AND SEALED THIS BALLOT AND CERTIFICATE IN SECRET. However, a family member may assist you in doing so. If you are an incapacitated absentee voter, a person other than a family member may also assist you in doing so.

.....  
( SIGNATURE of voter)

Any person providing assistance shall complete the following:

I do hereby certify that I am the person who provided assistance to this voter and declare that I will maintain the secrecy of this ballot.

.....  
(SIGNATURE of person  
providing assistance)

.....  
(PRINTED name of person  
providing assistance)

.....  
.....  
(address of person providing  
assistance)

Upon the margin of the flap on the inner envelope forwarded with any civilian absentee ballot intended to be voted in any primary election for the general election, there shall be printed a certificate in the following form:

#### CERTIFICATE OF CIVILIAN ABSENTEE VOTER

I, ....., whose  
(PRINT your name clearly)  
home address is .....  
(street address or R.D. number)  
....., DO HEREBY CERTIFY,  
(municipality)

subject to the penalties for fraudulent voting, that I marked this ballot for the primary election of the ..... political party  
(name of party)

I am the person who applied for the enclosed ballot. I MARKED AND SEALED THIS BALLOT AND CERTIFICATE IN SECRET. However, a family member may assist you in doing so. If you are an incapacitated absentee voter, a person other than a family member may also assist you in doing so.

.....  
( SIGNATURE of voter)

Any person providing assistance shall complete the following:

I do hereby certify that I am the person who provided assistance to this voter and declare that I will maintain the secrecy of this ballot.

.....  
(SIGNATURE of person  
providing assistance)

.....  
(PRINTED name of person  
providing assistance)

.....  
(address of person providing  
assistance)

15. Section 19 of P.L.1964, c.134 (C.19:58-19) is amended to read as follows:

**C.19:58-19 Certificate; form.**

19. Upon the said margin of said flap on the inner envelope to be sent to a removed resident there shall be printed a certificate in affidavit form substantially as follows:

State of .....

County of ....., or (if applicable)

Country of .....

I, the undersigned, do hereby certify that:

1. I am a citizen of the United States;
2. I was born on .....  
(date of birth)
3. I reside at ..... in  
(street and number or R.D. route)  
..... in .....  
(name of city or municipality) (name of county)  
county in the State of ..... and I have  
(name of state, territory, commonwealth,  
or District of Columbia)  
resided at this address since my removal from my former address in  
New Jersey and expect to continue to reside there until and on the  
date of said election;
4. I formerly resided at .....  
(street and number or R.D. route)  
in ..... in .....  
(name of city or municipality) (name of county)  
county in New Jersey and I was registered as a voter, and continued  
to reside at said address until my removal to my present address;
5. Because of the insufficient period of my residence at my  
present address, .....  
I am unable to vote at the election to be held on .....  
(date of election)  
but I believe that I am eligible to vote at my former residence in  
the State of New Jersey for electors for President and Vice-Presi-  
dent of the United States at such election.

..... Applicant  
(SIGNATURE)

..... Applicant  
(PRINT name here)

16. Section 9 of P.L.1976, c.23 (C.19:59-9) is amended to read  
as follows:

**C.19:59-9 Printing of certificate upon margin of flap of inner envelope.**

9. Upon the margin of the flap of the inner envelope to be sent  
to an overseas Federal election voter shall be printed a certificate  
substantially as follows:

I, the undersigned, residing at .....

..... am the person who applied for, received and  
voted the enclosed Overseas Federal Election Ballot.

Dated:..... Voter  
(SIGNATURE)

.....Voter  
(PRINT or type name)

17. Section 14 of P.L.1951, c.280 (C.40:62-105.14) is amended  
to read as follows:

**C.40:62-105.14 Ballots, specifications.**

14. Each ballot shall have at the top thereof a coupon at least one inch deep extending across the ballot above a perforated line. The coupons shall be numbered consecutively from one to the number of ballots prepared for use in such election. Upon the coupon and above the perforated line shall be the words "To be torn off by the judge of election" and "Fold to this line." Below the perforated line shall be printed the words "Water district election ballot," below which and extending across the ballot in one or more lines shall be the corporate name of the water district, the date of the election, and if the district be divided into two or more polling places the number, name or other mark or designation to distinguish the said polling place, and the printed facsimile signature of the clerk of the board of water commissioners. The heading shall be set apart from the body of the ballot by a heavy diagram rule. Below this rule shall be printed the following directions instructing the voter how to indicate his choice for the person for whom he may desire to vote and stating the maximum number of candidates he may vote for: "To vote for any person whose name appears on this ballot mark a cross (x), plus (+) or check (✓) mark with ink or pencil in the place or square at the left of the name of such person." Below these instructions shall be printed a heavy diagram rule below which shall be printed such directions to the voter as may be necessary as "Vote for one," or "Vote for two," or a greater number as the case may be, immediately after which shall be printed the names of the candidates duly nominated by petition. The names of the candidates shall be printed as they appear signed to the certificate of acceptance, but no candidate who shall have failed to file a certificate of acceptance shall have his name printed upon the ballot. The same size and style of type shall be used in printing the name of each candidate; but between the names of the candidates shall be printed a heavy dia-

gram rule and the space between each of the rules shall be exactly equal. Immediately after the space allotted to the names of candidates there shall be as many ruled blank spaces as there are members to be voted for. Immediately to the left and on the same line with the name of each candidate and blank space there shall be printed a square the same size of type in which the name of the candidate is printed, which type shall, in no case, be larger than twenty-four point.

18. Section 15 of P.L.1951, c.280 (C.40:62-105.15) is amended to read as follows:

**C.40:62-105.15 Form of ballot.**

15. The following is an illustration of the form of ballot:

No.....

To be torn off by the Judge of Election.  
Fold to this line.

.....  
**WATER DISTRICT ELECTION BALLOT**  
Water District No. 1  
Township of Webster, Warren County  
February 14, 1926

Polling District No. 1  
Unexcelled Fire House.

John Henry Doe,  
Clerk

To vote for any person whose name appears on this ballot mark a cross (x) or plus (+) or check (✓) mark with ink or pencil in the place or square at the left of the name of such person.

For Membership to Board of Water Commissioners.

Full Term.

Vote for two.

☐ RUTHERFORD B. FALLON

☐ WILLIAM F. SEIBEL

☐ JAMES A. STEPHENS

☐ THOMAS TEMPLETON

☐

☐

☐

For Membership to Board of Water Commissioners.

Unexpired One-Year Term.

Vote for one.

☐ FRANCIS R. LORRI

**□ ARTHUR H. PATTERSON****□**

using as much of the form as may be applicable to the current water district election and extending the same to provide for cases not herein specified.

19. Section 24 of P.L.1951, c.280 (C.40:62-105.24) is amended to read as follows:

**C.40:62-105.24 Appropriations voted on, form of question.**

24. All appropriations to be voted upon at such water district election or any other proposition or question that may be required shall be placed upon the ballot immediately following the names of the candidates for election to the board of water commissioners in the following form:

	Yes.	(Question to be voted on.)
	No.	

If the voter makes a cross (X), plus (+) or check (✓) mark in ink or pencil in the square of the left of and opposite the word "Yes," it shall be counted as a vote in favor of said proposition.

If the voter shall make a cross (X), plus (+) or check (✓) mark in ink or pencil in the square to the left of and opposite the word "No," it shall be counted as a vote against such proposition. If no such mark shall be made in the square to the left of and opposite either the word "Yes" or "No," it shall not be counted as a vote either for or against such proposition.

20. N.J.S.40A:14-73 is amended to read as follows:

**Form of ballot.**

40A:14-73. The ballots shall be written or printed on opaque paper, uniform in size and quality.

Each ballot shall have at the top, a coupon, at least one inch wide extending across the ballot above a perforated line. The coupons shall be numbered consecutively. The coupon shall contain the following statements: "To be torn off by the clerk" and "Fold to this line." Below the perforated line shall be printed or written, "Fire dis-

trict election ballot," then the official designation of the fire district and polling place and date of the election. It shall bear the signature or facsimile signature of the municipal clerk, or the clerk of the board of fire commissioners, as the case may be. The heading shall be set apart from the body of the ballot by a marked-off space. In said space, the voters shall be instructed how to indicate their choice of candidates and the number to be voted upon as follows: "To vote for any person whose name appears on this ballot mark a cross (X), plus (+) or check (✓) in ink or pencil in the place or square at the left of the name of such person." Underneath these instructions shall be directions as to the number of candidates to be voted for and the name of each qualified candidate, without grouping, to be placed according to the alphabetical order of their surnames.

The ballot shall be substantially as follows:

No.....

To be torn off by the Clerk.

Fold to this line.

.....  
FIRE DISTRICT ELECTION BALLOT

Fire District No. 1,

Township of Webster, Warren County

Date.....

Polling District No. 1

John Henry Doe,

Unexcelled Fire House.

Clerk

To vote for any person whose name appears on this ballot mark a cross (x) or plus (+) or check (✓) mark with ink or pencil in the place or square at the left of the name of such person.

For Membership to Board of Fire Commissioners.

Full Term.

Vote for Two.

☐ RUTHERFORD B. FALLON

☐ WILLIAM F. SEIBEL

☐ JAMES A. STEPHENS

☐ THOMAS TEMPLETON

For Membership to Board of Fire Commissioners.

Unexpired One-Year Term.

Vote for One.

☐ FRANCIS R. LORRI

☐ ARTHUR H. PATTERSON



using as much of the form as may be applicable to the current fire district election and extending the same to provide for cases not herein specified.

21. N.J.S.40A:14-78 is amended to read as follows:

**Appropriation to be voted upon, form of question.**

40A:14-78. Any appropriation or other matter to be voted upon at such election shall be in the form of a question, placed upon the ballot immediately following the names of the candidates for members of the board of fire commissioners, in substantially the following form:

	Yes.	Question to be voted on.
	No.	

The voter shall indicate his approval or opposition by making a cross (X), plus (+) or check (✓) mark in ink or pencil in the appropriate square.

22. R.S.44:1-41 is amended to read as follows:

**Voting.**

44:1-41. If the voter makes an x or + mark in ink or pencil in the square at the left of the word "YES," it shall be counted as a vote in favor of the acceptance of the resolution.

If the voter makes an x or + mark in ink or pencil in the square at the left of the word "NO," it shall be counted as a vote against the acceptance of the resolution, and if no mark is made in either square it shall not be counted as a vote either for or against the acceptance of the resolution.

23. R.S.44:4-134 is amended to read as follows:

**Voting.**

44:4-134. If the voter makes an x or + mark in ink or pencil in the square at the left of the word "yes," it shall be counted as a vote in favor of the adoption of this chapter.

If the voter makes an x or + mark in ink or pencil in the square at the left of the word "no," it shall be counted as a vote against the adoption of this chapter, and in case no mark is made in the square at the left of the word "yes" or "no" it shall not be counted as a vote for or against the acceptance of this chapter.

24. R.S.44:5-5 is amended to read as follows:

**Referendum; ballot, form.**

44:5-5. The question of the adoption of the provisions of sections 44:5-4 to 44:5-7 of this title shall not be submitted to the electors of a city until after a resolution is passed by the legislative body of the city directing the clerk to give public notice of the submission of the question. Upon the adoption of the resolution the clerk of the city shall cause notice of the submission of the question to be published in two newspapers circulating in the city for at least ten days before the holding of the election.

The officer charged with the duty of preparing the official ballots for the election of municipal officers of the city at that election shall cause to be printed on each official ballot beneath the list of candidates thereon substantially the following:

"To vote upon the public question printed below, if in favor thereof mark a cross (X) or plus (+) in the square at the left of the word YES, and if opposed thereto mark a cross (X) or plus (+) in the square at the left of the word NO.

	Yes.	"Shall sections 44:5-4 to 44:5-7 of the title Poor of the Revised Statutes, enabling the city to contract for the purpose of supporting, maintaining and caring for indigent patients in any regularly incorporated hospital located in the city, be adopted?"
	No.	

If the voter makes an X or + mark in ink or pencil in the square at the left of the word "yes," it shall be counted as a vote in favor of the

adoption of the sections. If the voter makes an X or + mark in ink or pencil in the square at the left of the word "no" it shall be counted as a vote against the adoption of the sections, and if no mark is made in either square at the left of either the word "yes" or "no" it shall not be counted as a vote for or against the acceptance of the sections.

25. If enacted on or before December 31, 1994, this act shall take effect on January 1, 1995. If enacted after December 31, 1994, this act shall, if enacted on or after January 1 of a calendar year and on or before June 30 of that calendar year, take effect on July 1 of that calendar year, and if enacted on or after July 1 of a calendar year and on or before December 31 of that calendar year, take effect on January 1 of the following calendar year.

Approved July 22, 1994.

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#### CHAPTER 78

AN ACT concerning reduced rates by municipalities, municipal and county utilities authorities and sewerage authorities for senior citizens and the permanently disabled, and amending and supplementing various sections of statutory law.

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

**C.40:14A-8.2 Establishment of rates or schedules for senior citizens, disabled.**

1. Any county or municipal sewerage authority or county or municipal utilities authority may establish within its district rates or schedules which provide for a reduction or total abatement of the periodic rents, rates, fees, or other charges for the use or services of the sewerage system which are charged to or collected from any person residing in the district of the age of 65 or more years, or less than 65 years of age and permanently and totally disabled according to the provisions of the federal Social Security Act, 42 U.S.C. §301 et seq., or disabled under any federal law administered by the United States Department of Veterans Affairs if the disability is rated as 60% or higher, and the person either is annually eligible to receive assistance under the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program; P.L.1975, c.194 (C.30:4D-20 et seq.) or

has a total income not in excess of \$10,000 per year exclusive of benefits under any one of the following:

- a. The federal Social Security Act, 42 U.S.C. §301 et seq. and all amendments and supplements thereto;
- b. Any other program of the federal government or pursuant to any other federal law which provides benefits in whole or in part in lieu of benefits referred to in, or for persons excluded from coverage under subsection a. of this section including, but not limited to, the federal "Railroad Retirement Act of 1974," 45 U.S.C. §231 et seq., and federal pension, disability and retirement programs; or
- c. Pension, disability or retirement programs of any state or its political subdivisions, or agencies thereof, for persons not covered under subsection a. of this section except that, the total amount of benefits to be allowed exclusion by any owner under subsection b. or c. of this section shall not be in excess of the maximum amount of benefits payable to, and allowable for exclusion by, an owner in similar circumstances under subsection a. of this section.

2. Section 8 of P.L.1946, c.138 (C.40:14A-8) is amended to read as follows:

**C.40:14A-8 Service charges authorized.**

8. (a) Every sewerage authority is hereby authorized to charge and collect rents, rates, fees or other charges (in this act sometimes referred to as "service charges") for direct or indirect connection with, or the use or services of, the sewerage system.

Such service charges may be charged to and collected from any person contracting for such connection or use or services or from the owner or occupant, or both of them, of any real property which directly or indirectly is or has been connected with the system or from or on which originates or has originated sewage or other wastes which directly or indirectly have entered or may enter the sewerage system, and the owner of any such real property shall be liable for and shall pay such service charges to the sewerage authority at the time when and the place where such service charges are due and payable.

(b) Rents, rates, fees and charges, which may be payable periodically, being in the nature of use or service charges, shall as nearly as the sewerage authority shall deem practicable and equitable be uniform throughout the district for the same type, class and amount of use or service of the sewerage system, except as permitted by section 1 of P.L.1994, c.78 (C.40:14A-8.2), and may be based or computed either on the consumption of water on or in connection

with the real property, making due allowance for commercial use of water, or on the number and kind of water outlets on or in connection with the real property, or on the number and kind of plumbing or sewerage fixtures or facilities on or in connection with the real property, or on the number of persons residing or working on or otherwise connected or identified with the real property, or on the capacity of the improvements on or connected with the real property, or on any other factors determining the type, class and amount of use or service of the sewerage system, or on any combination of any such factors, and may give weight to the characteristics of the sewage and other wastes and any other special matter affecting the cost of treatment and disposal thereof, including chlorine demand, biochemical oxygen demand, concentration of solids and chemical composition. In addition to any such periodic service charges, a separate charge in the nature of a connection fee or tapping fee, in respect of each connection of any property with the sewerage system, may be imposed upon the owner or occupant of the property so connected. Such connection charges shall be uniform within each class of users, and the amount thereof shall not exceed the actual cost of the physical connection, if made by the authority, plus an amount computed in the following manner to represent a fair payment toward the cost of the system:

(1) The amount representing all debt service, including but not limited to sinking funds, reserve funds, the principal and interest on bonds, and the amount of any loans and interest thereon, paid by the sewerage authority to defray the capital cost of developing the system as of the end of the immediately preceding fiscal year of the authority shall be added to all capital expenditures made by the authority not funded by a bond ordinance or debt for the development of the system as of the end of the immediately preceding fiscal year of the authority.

(2) Any gifts, contributions or subsidies to the authority received from, and not reimbursed or reimbursable to any federal, State, county or municipal government or agency or any private person, and that portion of amounts paid to the authority by a public entity under a service agreement or service contract which is not repaid to the public entity by the authority, shall then be subtracted.

(3) The remainder shall be divided by the total number of service units served by the authority at the end of the immediately preceding fiscal year of the authority, and the results shall then be apportioned to each new connector according to the number of service units attributed to that connector, to produce the connector's

contribution to the cost of the system. In attributing service units to each connector, the estimated average daily flow of sewage for the connector shall be divided by the average daily flow of sewage for the average single family residence in the authority's district to produce the number of service units to be attributed.

The connection fee shall be recomputed at the end of each fiscal year of the authority, after a public hearing is held in the manner prescribed in subsection (c) of this section. The revised connection fee may be imposed upon those who subsequently connect in that fiscal year to the system. The combination of such connection fee or tapping fee and the aforesaid periodic service charges shall meet the requirements of subsection (c) hereof.

(c) The sewerage authority shall prescribe and from time to time when necessary revise a schedule of service charges, which shall comply with the terms of any contract of the sewerage authority and in any event shall be such that the revenues of the sewerage authority will at all times be adequate to pay all expenses of operation and maintenance of the sewerage system, including reserves, insurance, extensions, and replacements, and to pay punctually the principal of and interest on any bonds and to maintain such reserves or sinking funds therefor as may be required by the terms of any contract of the sewerage authority or as may be deemed necessary or desirable by the sewerage authority. Said schedule shall thus be prescribed and from time to time revised by the sewerage authority after public hearing thereon which shall be held by the sewerage authority at least 20 days after notice of the proposed adjustment is mailed to the clerk of each municipality serviced by the authority and publication of notice of the proposed adjustment of the service charges and of the time and place of the public hearing in at least two newspapers of general circulation in the area serviced by the authority. The sewerage authority shall provide evidence at the hearing showing that the proposed adjustment of the service charges is necessary and reasonable, and shall provide the opportunity for cross-examination of persons offering such evidence, and a transcript of the hearing shall be made and a copy thereof shall be available upon request to any interested party at a reasonable fee. The sewerage authority shall likewise fix and determine the time or times when and the place or places where such service charges shall be due and payable and may require that such service charges shall be paid in advance for periods of not more than one year. A copy of such schedule of service charges in effect shall at all times be kept on file at the principal office of the sewerage authority and shall at all reasonable times be open to public inspection.

(d) Any county sewerage authority may establish sewerage regions in portions of the district. Rents, rates, fees and charges which may be payable periodically, being in the nature of use or service charges, shall as nearly as the sewerage authority shall deem practicable and equitable, be uniform throughout the district for the same type, class and amount of use or service of the sewerage systems, except as permitted by section 1 of P.L.1994, c.78 (C.40:14A-8.2), and shall meet all other requirements of subsection (b) hereof.

3. Section 21 of P.L.1957, c.183 (C.40:14B-21) is amended to read as follows:

**C.40:14B-21 Water service charges.**

21. Every municipal authority is hereby authorized to charge and collect rents, rates, fees or other charges (in this act sometimes referred to as "water service charges") for direct or indirect connection with, or the use, products or services of, the water system, or for sale of water or water services, facilities or products. Such water service charges may be charged to and collected from any person contracting for such connection or use, products or services or for such sale or from the owner or occupant, or both of them, of any real property which directly or indirectly is or has been connected with the water system or to which directly or indirectly has been supplied or furnished such use, products or services of the water system or water or water services, facilities or products, and the owner of any such real property shall be liable for and shall pay such water service charges to the municipal authority at the time when and place where such water service charges are due and payable. Such rents, rates, fees and charges shall as nearly as the municipal authority shall deem practicable and equitable be uniform throughout the district for the same type, class and amount of use, products or services of the water system, except as permitted by section 1 of P.L.1992, c.215 (C.40:14B-22.2), and may be based or computed either on the consumption of water on or in connection with the real property, or on the number and kind of water outlets on or in connection with the real property, or on the number and kind of plumbing fixtures or facilities on or in connection with the real property, or on the number of persons residing or working on or otherwise connected or identified with the real property, or on the capacity of the improvements on or connected with the real property, or on any other factors determining the type, class and amount of use,

products or services of the water system supplied or furnished, or on any combination of such factors, and may give weight to the characteristics of the water or water services, facilities or products and, as to service outside the district, any other matter affecting the cost of supplying or furnishing the same, including the cost of installation of necessary physical properties.

In addition to any such water service charges, a separate charge in the nature of a connection fee or tapping fee, in respect of each connection of any property with the water system, may be imposed upon the owner or occupant of the property so connected. Such connection charges shall be uniform within each class of users and the amount thereof shall not exceed the actual cost of the physical connection, if made by the authority, plus an amount computed in the following manner to represent a fair payment toward the cost of the system:

a. The amount representing all debt service, including but not limited to sinking funds, reserve funds, the principal and interest on bonds, and the amount of any loans and interest thereon, paid by a municipal authority to defray the capital cost of developing the system as of the end of the immediately preceding fiscal year of the authority shall be added to all capital expenditures made by the authority not funded by a bond ordinance or debt for the development of the system as of the end of the immediately preceding fiscal year of the authority.

b. Any gifts, contributions or subsidies to the authority received from, and not reimbursed or reimbursable to any federal, State, county or municipal government or agency or any private person, and that portion of amounts paid to the authority by a public entity under a service agreement or service contract which is not repaid to the public entity by the authority, shall then be subtracted.

c. The remainder shall be divided by the total number of service units served by the authority at the end of the immediately preceding fiscal year of the authority, and the results shall then be apportioned to each new connector according to the number of service units attributed to that connector, to produce the connector's contribution to the cost of the system. In attributing service units to each connector, the estimated average daily flow of water for the connector shall be divided by the average daily flow of water to the average single family residence in the authority's district, to produce the number of service units to be attributed.

The connection fee shall be recomputed at the end of each fiscal year of the authority, after a public hearing is held in the manner prescribed in section 23 of P.L.1957, c.183 (C.40:14B-23). The revised connection fee may be imposed upon those who subsequently connect



in that fiscal year to the system. The combination of such connection fee or tapping fee and the aforesaid water service charges shall meet the requirements of section 23 of P.L.1957, c.183 (C.40:14B-23). The foregoing notwithstanding, no municipal authority shall impose any charges or fees in excess of the cost of water actually used for any sprinkler system required to be installed in any residential health care facility pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and regulations promulgated thereunder or in any rooming or boarding house pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) and regulations promulgated thereunder. Nothing in this amendatory act shall preclude any municipal authority from charging for the actual cost of water main connection.

4. Section 1 of P.L.1992, c.215 (C.40:14B-22.2) is amended to read as follows:

**C.40:14B-22.2 Reduced, abated rents, rates, fees for senior citizens, disabled.**

1. Any municipal or county authority may establish within its district rates or schedules which provide for a reduction or total abatement of the rents, rates, fees, or other charges which are charged to or collected from any person residing in the district of the age of 65 or more years, or less than 65 years of age and permanently and totally disabled according to the provisions of the federal Social Security Act, 42 U.S.C. §301 et seq., or disabled under any federal law administered by the United States Department of Veterans Affairs if the disability is rated as 60% or higher, and the person either is annually eligible to receive assistance under the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program, P.L.1975, c.194 (C.30:4D-20 et seq.) or has a total income not in excess of \$10,000 per year exclusive of benefits under any one of the following:

a. The federal Social Security Act, 42 U.S.C. §301 et seq. and all amendments and supplements thereto;

b. Any other program of the federal government or pursuant to any other federal law which provides benefits in whole or in part in lieu of benefits referred to in, or for persons excluded from coverage under subsection a. of this section including, but not limited to, the federal "Railroad Retirement Act of 1974," 45 U.S.C. §231 et seq., and federal pension, disability and retirement programs; or

c. Pension, disability or retirement programs of any state or its political subdivisions, or agencies thereof, for persons not covered under subsection a. of this section except that, the total amount of benefits to be allowed exclusion by any owner under subsection b. or c. of this section shall not be in excess of the maximum amount of benefits payable to, and allowable for exclusion by, an owner in similar circumstances under subsection a. of this section.

**C.40A:26A-10.1 Establishment of rates or schedules for senior citizens, disabled.**

5. Any local unit operating a county or municipal sewerage facility may establish within its district rates or schedules which provide for a reduction or total abatement of the periodic rates, rentals, or other charges for the use or services of the sewerage system which are charged to or collected from any person residing in the district of the age of 65 or more years, or less than 65 years of age and permanently and totally disabled according to the provisions of the federal Social Security Act, 42 U.S.C. §301 et seq., or disabled under any federal law administered by the United States Department of Veterans Affairs if the disability is rated as 60% or higher, and the person either is annually eligible to receive assistance under the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program, P.L.1975, c.194 (C.30:4D-20 et seq.) or has a total income not in excess of \$10,000 per year exclusive of benefits under any one of the following:

a. The federal Social Security Act, 42 U.S.C. §301 et seq. and all amendments and supplements thereto;

b. Any other program of the federal government or pursuant to any other federal law which provides benefits in whole or in part in lieu of benefits referred to in, or for persons excluded from coverage under subsection a. of this section including, but not limited to, the federal "Railroad Retirement Act of 1974," 45 U.S.C. §231 et seq., and federal pension, disability and retirement programs; or

c. Pension, disability or retirement programs of any state or its political subdivisions, or agencies thereof, for persons not covered under subsection a. of this section except that, the total amount of benefits to be allowed exclusion by any owner under subsection b. or c. of this section shall not be in excess of the maximum amount of benefits payable to, and allowable for exclusion by, an owner in similar circumstances under subsection a. of this section.

6. N.J.S.40A:26A-10 is amended to read as follows:

**Rates, rentals, and other charges of sewerage services.**

40A:26A-10. After the commencement of operation of sewerage facilities, the local unit or units may prescribe and, from time to time, alter rates or rentals to be charged to users of sewerage services. Rates or rentals being in the nature of use or service charges or annual rental charges, shall be uniform and equitable for the same types and classes of use and service of the facilities, except as permitted by section 5 of P.L.1994, c.78 (C.40A:26A-10.1). Rates or rentals and types and classes of use and service may be based on any factors which the governing body or bodies of that local unit or units shall deem proper and equitable within the region served.

In fixing rates, rental and other charges for supplying sewerage services, the local unit or units shall establish a rate structure that allows, within the limits of any lawful covenants made with bondholders, the local unit to:

- a. Recover all costs of acquisition, construction or operation, including the costs of raw materials, administration, real or personal property, maintenance, taxes, debt service charges, fees and an amount equal to any operating budget deficit occurring in the immediately preceding fiscal year;
- b. Establish a surplus in an amount sufficient to provide for the reasonable anticipation of any contingency that may affect the operating of the sewerage facility, and, at the discretion of the local unit or units, allow for the transfer of moneys from the budget for the sewerage facilities to the local budget in accordance with section 5 of P.L.1983, c.111 (C.40A:4-35.1).

**C.40A:31-10.1 Establishment of rates or schedules of water supply services for senior citizens, disabled.**

7. Any local unit operating a county or municipal water supply facility may establish within its district rates or schedules which provide for a reduction or total abatement of the periodic rates, rentals, or other charges for water supply service which are charged to or collected from any person residing in the district of the age of 65 or more years, or less than 65 years of age and permanently and totally disabled according to the provisions of the federal Social Security Act, 42 U.S.C. §301 et seq., or disabled under any federal law administered by the United States Department of Veterans Affairs if the disability is rated as 60% or higher, and the person either is annually eligible to receive assistance under the "Pharmaceutical Assistance to the Aged and Disabled" (PAAD) program, P.L.1975, c.194 (C.30:4D-20 et seq.)

or has a total income not in excess of \$10,000 per year exclusive of benefits under any one of the following:

a. The federal Social Security Act, 42 U.S.C. §301 et seq. and all amendments and supplements thereto;

b. Any other program of the federal government or pursuant to any other federal law which provides benefits in whole or in part in lieu of benefits referred to in, or for persons excluded from coverage under subsection a. of this section including, but not limited to, the federal "Railroad Retirement Act of 1974," 45 U.S.C. §231 et seq., and federal pension, disability and retirement programs; or

c. Pension, disability or retirement programs of any state or its political subdivisions, or agencies thereof, for persons not covered under subsection a. of this section except that, the total amount of benefits to be allowed exclusion by any owner under subsection b. or c. of this section shall not be in excess of the maximum amount of benefits payable to, and allowable for exclusion by, an owner in similar circumstances under subsection a. of this section.

8. N.J.S.40A:31-10 is amended to read as follows:

**Rates, rentals, and other charges for water supply services.**

40A:31-10. After the commencement of operation of water supply facilities, the local unit or units may prescribe and, from time to time, alter rates or rentals to be charged to users of water supply services. Rates or rentals being in the nature of use or service charges or annual rental charges, shall be uniform and equitable for the same type and class of use or service of the facilities, except as permitted by section 7 of P.L.1994, c.78 (C.40A:31-10.1). Rates or rentals and types and classes of use and service may be based on any factors which the governing body or bodies of that local unit or units shall deem proper and equitable within the region served.

In fixing rates, rental and other charges for supplying water services, the local unit or units shall establish a rate structure that allows, within the limits of any lawful covenants made with bondholders, the local unit to:

a. Recover all costs of acquisition, construction or operation, including the costs of raw materials, administration, real or personal property, maintenance, taxes, debt service charges, fees and an amount equal to any operating budget deficit occurring in the immediately preceding fiscal year;

b. Establish a surplus in an amount sufficient to provide for the reasonable anticipation of any contingency that may affect the operation of the utility, and, at the discretion of the local unit or units, allow for the transfer of moneys from the budget for the water supply facilities to the local budget in accordance with section 5 of P.L.1983, c.111 (C.40A:4-35.1).

No local unit or units shall, however, impose any rates or rentals in excess of the cost of water actually used for any sprinkler system required to be installed in any residential health care facility pursuant to the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and regulations promulgated thereunder or in any rooming or boarding house pursuant to the "Rooming and Boarding House Act of 1979," P.L.1979, c.496 (C.55:13B-1 et al.) and regulations promulgated thereunder.

9. This act shall take effect immediately.

Approved July 26, 1994.

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#### CHAPTER 79

AN ACT concerning bottled water, and amending P.L.1987, c.227.

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

1. Section 4 of P.L.1987, c.227 (C.24:12-11) is amended to read as follows:

**C.24:12-11 Potability test results to Department of Health; annual report to legislative committees.**

4. Any plant owner or operator shall forward to the Department of Health a copy of all results of tests required to be conducted pursuant to this act. The certified laboratory conducting the potability tests may, upon written approval by the department, submit the test results on behalf of the plant owner or operator. The department is authorized to conduct or cause to be conducted spot checks to assure compliance with this act and the accuracy and integrity of the reported results. The department shall submit to the Senate Environment Committee, or its successor, and to the Assembly Environment and Energy Committee, or its successor, an annual report summarizing the test results submitted to the department and the spot checks conducted by the

department during the preceding year, together with any recommendations for administrative or legislative action. This report shall be made available to any interested person at a cost not to exceed the cost of reproduction and distribution.

2. This act shall take effect immediately.

Approved July 26, 1994.

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## CHAPTER 80

AN ACT making void and unenforceable certain provisions in contracts with public entities 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:58B-3 Definitions; certain provisions unenforceable.**

1. a. As used in this act:

“Public entity” means this State or any department, public authority, public agency, public commission or any instrumentality of this State authorized by law to make contracts for the making of any public work, but shall not include any county, municipality or instrumentality thereof.

“Contractor” means a person, his assignees or legal representatives, with whom a contract with a public entity is made.

b. A covenant, promise, agreement or understanding in, or in connection with or collateral to a contract, agreement or purchase order, to which a public entity is a party, relative to the construction, alteration, repair, maintenance, servicing or security of a building, structure, highway, roadway, railroad, appurtenance and appliance, including moving, demolition, excavating, grading, clearing, site preparation or development of real property connected therewith, purporting to limit a contractor’s remedy for delayed performance caused by the public entity’s negligence, bad faith, active interference, or other tortious conduct to an extension of time for performance under the contract, is against public policy and is void and unenforceable.

c. Nothing in this section shall be deemed to void any provisions in a contract, agreement or purchase order which limits a contractor’s remedy for delayed performance caused by reasons contemplated by the parties nor shall the negligence of others be imputed to the State.

d. Nothing in this section shall be deemed to void any provision in a contract, agreement or purchase order which requires notice of delays, provides for arbitration or other procedures for settlement or provides for liquidated damages.

2. This act shall take effect immediately.

Approved July 28, 1994.

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## CHAPTER 81

AN ACT concerning certain docketing and satisfaction of judgment fees and amending N.J.S.22A:2-7 and N.J.S.2A:16-11.

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

1. 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 except from the Special Civil Part, 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.

Docketing judgments or orders from the Special Civil Part, \$5.00 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, \$25.00.

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 and satisfactions of judgments or other liens 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.

2. N.J.S.2A:16-11 is amended to read as follows:

**Civil judgment and order docket.**

2A:16-11. The Clerk of the Superior Court shall keep a book known as a civil judgment and order docket in which shall be entered an abstract of each judgment or order for the payment of money, submitted for entry, including a judgment or order to pay counsel fees and other fees or costs, entered from, or made in, the Superior Court. A judgment of the Special Civil Part of the Law Division shall not be entered unless it is docketed in the manner specifically provided for Special Civil Part judgments. A judgment or order for the payment of money is one which has been reduced to a fixed dollar amount. Any judgment for periodic payments where a total amount has not been fixed shall not be considered as having been reduced to a fixed dollar amount unless a judgment fixing arrearages has been entered.

The entry required by this section shall constitute the record of the judgment, order or decree and a transcript thereof duly certified by the clerk of the court shall be a plenary evidence of such judgment, order or decree.



The clerk shall also make an entry upon the civil judgment and order docket indicating the nature of every judgment or order and an entry on return showing execution of process and the date when such judgment or order was entered.

3. This act shall take effect immediately.

Approved August 3, 1994.

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## CHAPTER 82

AN ACT concerning minors engaged in certain volunteer activities, and amending and supplementing P.L.1940, c.153.

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

**C.34:2-21.17d Employment of minors as volunteers for certain nonprofit organizations.**

1. Concurrent with all other provisions of P.L.1940, c.153 (C.34:2-21.1 et seq.), minors who are 14 through 17 years of age shall be permitted to work as volunteers for nonprofit organizations engaged in the construction of affordable housing as determined by the Commissioner of Labor subject to the following provisions:

a. That under no circumstances shall a minor be permitted to work in a project involving the construction of affordable housing that is in any way associated with a profit-making commercial enterprise;

b. That no minor shall operate, perform maintenance, clean, inspect or work in, about, or in connection with any power-driven machinery involved in the construction of affordable housing;

c. That no minor shall engage in the construction of affordable housing without the safety equipment required by law;

d. That no minor shall be permitted to work as a volunteer in the construction of affordable housing except under the direct supervision of an adult;

e. That no minor shall be exposed to hazardous waste products or other hazardous substances;

f. That no minor shall be permitted to work on any excavation, scaffolding or roofing;

g. That no minor shall be permitted to work:

(1) during school hours;

(2) before 7 a.m.;

(3) after 7 p.m.; except that minors may work until 9 p.m. between Memorial Day and Labor Day;

(4) for more than five consecutive hours without a half-hour break; and

(5) for more than 18 hours per week when school is in session; and

h. That the nonprofit organization engaged in the construction of affordable housing has secured liability insurance to provide compensation for all injuries, including, but not limited to, occupational illness, sustained by minors working voluntarily in the construction of affordable housing. The insurance required by this section shall have coverage limits of at least \$2,500,000 per occurrence, at least \$2,500,000 aggregate per year and \$250,000 for property damage, or such higher amounts as the Commissioner of Insurance may promulgate from time to time to adjust for inflation.

**C.34:2-21.17e Minor working voluntarily not deemed employee.**

2. A minor working voluntarily in the construction of affordable housing pursuant to section 1 of this act shall not be deemed an employee under R.S.34:15-36. A nonprofit organization which uses the services of a minor under this act shall not be subject to R.S.34:15-10, provided that the nonprofit organization has fully complied with P.L.1940, c.153 (C.34:2-21.1 et seq.) and the provisions of this act.

3. Section 17 of P.L.1940, c.153 (C.34:2-21.17) is amended to read as follows:

**C.34:2-21.17 Prohibited employment.**

17. No minor under 16 years of age shall be employed, permitted or suffered to work in, about, or in connection with power-driven machinery.

No minor under 18 years of age shall be employed, permitted or suffered to work in, about, or in connection with the following:

The manufacture or packing of paints, colors, white lead, or red lead;

The handling of dangerous or poisonous acids or dyes; injurious quantities of toxic or noxious dust, gases, vapors or fumes;

Work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin;

The manufacture, transportation or use of explosives or highly inflammable substances;

Oiling, wiping, or cleaning machinery in motion or assisting therein;

Operation or helping in the operation of power-driven wood-working machinery; provided, that apprentices operating under

conditions of bona fide apprenticeship may operate such machines under competent instruction and supervision;

Grinding, abrasive, polishing or buffing machines; provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools;

Punch presses or stamping machines if the clearance between the ram and the dye or the stripper exceeds 1/4 inch;

Cutting machines having a guillotine action;

Corrugating, crimping or embossing machines;

Paper lace machines;

Dough brakes or mixing machines in bakeries or cracker machinery;

Calender rolls or mixing rolls in rubber manufacturing;

Centrifugal extractors, or mangles in laundries or dry cleaning establishments;

Ore reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops, or any other place in which the heating, melting, or heat treatment of metals is carried on;

Mines or quarries;

Steam boilers carrying a pressure in excess of 15 pounds;

Construction work of any kind, except in the construction of affordable housing as a volunteer for a nonprofit organization as provided in section 1 of P.L.1994, c.82 (C.34:2-21.17d);

Fabrication or assembly of ships;

Operation or repair of elevators or other hoisting apparatus;

The transportation of payrolls other than within the premises of the employer.

No minor under 18 years of age shall be employed, permitted, or suffered to work in, about, or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, or are sold for consumption on the premises, or in a pool or billiard room; provided, however, this paragraph shall not apply to minors 16 years of age or over, employed as pinsetters, lane attendants, or busboys in public bowling alleys as provided in section 3 of P.L.1940, c.153 (C.34:2-21.3) or to minors employed in theatrical productions where alcoholic beverages are sold on the premises.

Minors 14 years of age or over may be employed as golf course caddies and pool attendants.

No minor under 18 years of age shall be employed, permitted, or suffered to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety, or welfare of

such minor, as such occupation shall, from time to time, be determined and declared by the Commissioner of Labor to be hazardous or injurious to the life, health, safety, or welfare of such minor, after a public hearing thereon and after such notice as the commissioner may by regulation prescribe.

None of the provisions of this section regarding employment in connection with alcoholic liquors shall be construed to prevent the employment of minors 16 years of age or more in a restaurant as defined in section 1 of P.L.1940, c.153 (C.34:2-21.1) and as provided for in section 3 of P.L.1940, c.153 (C.34:2-21.3), in a public bowling alley as provided in this section, or in the executive offices, maintenance departments, or pool or beach areas of a hotel, motel or guesthouse; provided, however, that no minor shall engage in the preparation, sale or serving of alcoholic beverages, nor in the preparation of photographs, nor in any dancing or theatrical exhibition or performance which is not part of a theatrical production where alcoholic beverages are sold on the premises, while so employed; and provided, further, that any minor so employed shall be closely supervised while engaged in the clearing of alcoholic beverages.

Nothing in this section shall be deemed to apply to the work done by pupils in public or private schools of New Jersey, under the supervision and instruction of officers or teachers of such organizations or schools, or to a minor who is 17 years of age employed in the type of work in which such minor majored under the conditions of the special vocational school graduate permit provided in section 15 of P.L.1940, c.153 (C.34:2-21.15).

Nothing in this section shall be construed to prevent minors 16 years of age or older who are members of a Junior Firemen's Auxiliary, created pursuant to N.J.S.40A:14-95, from engaging in any activities authorized by N.J.S.40A:14-98.

Notwithstanding any provision of this section to the contrary, a minor who is 15 years of age or older may work as a cashier or bagger on or near a supermarket or retail establishment cash register conveyor belt.

4. This act shall take effect immediately.

Approved August 3, 1994.

## CHAPTER 83

AN ACT authorizing the sale of certain surplus real property owned by the State.

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

1. The Department of Military and Veterans' Affairs is authorized to sell and convey as surplus real property all of the State's interest in improvements, known as the Bound Brook Armory, situated on 5.6 acres located in the Borough of Bound Brook, Somerset County. The property is located at Tea Street and Highway 28 and designated as Block 68, Lot 1 on the Borough of Bound Brook tax map. The sale shall be upon terms and conditions approved by the State House Commission.

2. The proceeds from the sale of property under section 1 of this act shall be deposited in the General Fund of the State.

3. This act shall take effect immediately.

Approved August 3, 1994.

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CHAPTER 84

AN ACT concerning the decommissioning of dams and reservoirs, and amending R.S.58:4-5, R.S.58:4-9 and R.S.58:4-10.

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

1. R.S.58:4-5 is amended as follows:

**Alterations, additions and repairs of unsafe reservoirs or dams.**

58:4-5. If, in the judgment of the commissioner, any reservoir or dam is not sufficiently strong to resist the pressure of water upon it or there is reasonable cause to believe that danger to life or property may be anticipated from the reservoir or dam, or if for any other cause the commissioner shall determine the reservoir or dam to be unsafe or improperly maintained, the commissioner shall determine whether the water in the reservoir or above the dam shall be drawn off in whole or in

part, and what alterations, additions and repairs are necessary to be made to the reservoir or dam to make it safe and properly maintained. The commissioner shall forthwith in writing order the owner or person having control of the reservoir or dam to cause the alterations, additions and repairs to be made within the time to be limited in the order. The commissioner also may order the water in the reservoir or above the dam to be drawn off in whole or in part as the commissioner may determine. The commissioner shall not approve the decommissioning of a reservoir or dam until the commissioner has provided 30 days' prior notice and the commissioner has complied with the provisions of R.S.58:4-10 as applicable. The notice of the proposed decommissioning shall be published at least 30 days prior to the decommissioning of the reservoir or dam in at least one newspaper of general circulation in the municipality in which the reservoir or dam is located. The commissioner shall have the right to enter upon any and all properties for the purpose of obtaining information about the safety and proper maintenance of any reservoir, dam or appurtenant structures located therein.

2. R.S.58:4-9 is amended to read as follows:

**Maintenance of existing reservoirs and dams; petition against abandonment.**

58:4-9. Where a reservoir or dam has been in existence 20 years and the owners of land along the shores above the dam or on the reservoir have made or shall have made permanent improvements on the land or where the shores have become a populated community, depending upon the permanency of the condition created, or where the reservoir or dam has become a valuable resource for the quality of life in the municipality in which the reservoir or dam is located, and a petition signed by a majority of the landowners along the shore of any pond formed by the reservoir or dam, or by any number of residents of the municipality in which the reservoir or dam is located, or by the governing body of the municipality, protesting against the removal of the reservoir, water or dam or the decommissioning of the reservoir or dam has been filed with the commissioner, the owner or owners of the reservoir or dam shall not, without the consent of the commissioner, tear down, destroy or abandon the reservoir or dam, or, except for the purpose of making necessary repairs, withdraw the water below the usual low-water mark, or maintain the water at the reduced level.

3. R.S.58:4-10 is amended to read as follows:

**Hearing on petition; fixing low-water mark; maintenance expenses.**

58:4-10. When a petition has been filed protesting against the removal of any reservoir, water or dam or against the decommissioning of any reservoir or dam as provided in R.S.58:4-9, the commissioner shall hold a public hearing, upon 30 days' notice to all parties interested, and following prior notice published 30 days before the hearing in at least one newspaper of general circulation in the municipality in which the reservoir or dam is located. Following this public hearing, the commissioner may make a determination concerning the removal of the reservoir, water or dam or decommissioning of the reservoir or dam and may then establish and fix a permanent low-water mark. Should it appear that the maintenance of the reservoir or dam would be an undue burden upon the owner thereof, the commissioner shall enter into negotiations with the landowners interested around the reservoir or above the dam, the governing body of the municipality in which the reservoir or dam is located, and any other parties to the petition filed with the commissioner protesting against the removal of the reservoir, water or dam or the decommissioning of the reservoir or dam, for the purpose of determining how and by whom the expenses of maintenance shall be paid.

4. This act shall take effect immediately.

Approved August 3, 1994.

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**CHAPTER 85**

AN ACT increasing the membership of certain authorities in certain municipalities and amending P.L.1946, c.138 and P.L.1948, c.348.

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

1. Section 4 of P.L.1946, c.138 (C.40:14A-4) is amended to read as follows:

**C.40:14A-4 Creation of sewerage authorities.**

4. (a) The governing body of any county may, by resolution duly adopted, create a public body corporate and politic under the name and style of "the ..... sewerage authority," with all or any significant part of the name of such county inserted. Said body shall

consist of the five members thereof, who shall be appointed by resolution of the governing body as hereinafter in this section provided, together with the additional members thereof, if any, appointed as hereinafter in subsection (i) of this section provided, and it shall constitute the sewerage authority contemplated and provided for in this act and an agency and instrumentality of said county. After the taking effect of the resolution for the creation of said body and the filing of a certified copy thereof as in subsection (d) of this section provided, five persons shall be appointed as the members of the sewerage authority. The members first appointed shall, by the resolution of appointment, be designated to serve for terms respectively expiring on the first days of the first, second, third, fourth and fifth Februaries next ensuing after the dates of their appointments. On or after January 1 in each year after such first appointments, one person shall be appointed as a member of the sewerage authority to serve for a term commencing on February 1 in such year and expiring on February 1 in the fifth year after such year. In the event of a vacancy in the membership of the sewerage authority occurring during an unexpired term of office, a person shall be appointed as a member of the sewerage authority to serve for such unexpired term.

(b) The governing body of any municipality may, by ordinance duly adopted, create a public body corporate and politic under the name and style of "the ..... sewerage authority," with all or any significant part of the name of such municipality inserted. A sewerage authority created pursuant to this section by a municipality other than a city of the first class shall consist of five members and a sewerage authority created pursuant to this section by a municipality which is a city of the first class shall consist of five or seven members, as determined by the governing body. Members of the sewerage authority shall be appointed by resolution of the governing body as hereinafter in this section provided, and the authority shall constitute the sewerage authority contemplated and provided for in this act and an agency and instrumentality of said municipality. After the taking effect of such ordinance and the filing of a certified copy thereof as in subsection (d) of this section provided, the members of the sewerage authority shall be appointed. The members first appointed shall, by the resolution of appointment, be designated to serve for terms respectively expiring as follows: the terms of the first four members shall expire in turn on each of the first days of the first, second, third and fourth Februaries next ensuing after the dates of their appointments, and the remaining members shall be designated to serve for terms expiring on the first day of the fifth February next ensuing after the date of their appoint-



ment. On or after January 1 in each year after such first appointments, one person shall be appointed or reappointed as a member of the sewerage authority to succeed each member whose term is expiring, and shall serve for a term commencing on February 1 in such year and expiring on February 1 in the fifth year after such year. In the event of a vacancy in the membership of the sewerage authority occurring during an unexpired term of office, a person shall be appointed as a member of the sewerage authority to serve for such unexpired term.

The governing body of a municipality which is a city of the first class may increase the membership of its sewerage authority to seven members from five members. The two additional members shall be appointed to serve five-year terms, commencing on the February 1 next following their appointment and expiring on February 1 in the fifth year after their appointment.

(c) The governing bodies of any two or more municipalities or any two or more counties, the areas of which together comprise an integral body of territory, may, by parallel ordinances, or in the case of counties, by parallel resolutions, duly adopted by each of such governing bodies within any single calendar year, create a public body corporate and politic under the name and style of "the ..... sewerage authority," with all or any significant part of the name of each such municipality or county or some identifying geographical phrase inserted. Said body shall consist of the members thereof, in an aggregate number determined as hereinafter in this subsection provided, who shall be appointed by resolutions of the several governing bodies as hereinafter in this section provided, and it shall constitute the sewerage authority contemplated and provided for in this act and an agency and instrumentality of the said municipalities or counties. The number of members of the sewerage authority to be appointed at any time for full terms of office by the governing body of any such municipality or county shall be as may be stated in said ordinances or resolutions, which shall be not less than one nor more than three. After the taking effect of the said ordinances or resolutions of all such municipalities or counties and after the filing of certified copies thereof as in subsection (d) of this section provided, the appropriate number of persons shall be appointed as members of the sewerage authority by the governing body of each municipality or county. In the case of municipalities or counties which by ordinance or resolution are entitled to appoint only one member of the authority, the total number of members, if five or more, shall be divided into five classes as nearly equal as possible, except that if there are less than five members, each member shall constitute a class. The members initially appointed shall

be appointed for such terms that the terms of one class shall expire on the first day of each of the first, second, third, fourth and fifth Februaries next ensuing the date of appointment. In the event the several municipalities or counties cannot agree on the terms of the respective representatives, such terms shall be determined by lot. On or after January 1 in each year after such appointments, the expiring terms shall be filled by the appointment for terms commencing February 1 in such year and expiring on the first day of the fifth February next ensuing.

Upon the expiration of the terms of office of members, in office on July 1, 1970, of sewerage authorities created by two or more municipalities or counties, where only one member is appointed by any participating municipality or county, their immediate successors, except for appointments to fill vacancies, shall be appointed for designated terms of one, two, three, four or five years in the same manner as in this subsection (c) provided as to initial appointees.

In municipalities or counties entitled to appoint three members, the appointing authority shall designate one of the initial appointees to serve for a term of three years, one for four years and one for five years. In municipalities or counties entitled to appoint two members, the appointing authority shall designate one of the initial appointees to serve for a term of five years and one for four years. On or after January 1 in the year in which expire the terms of the said members first appointed and in every fifth year thereafter, the appropriate number of persons shall be appointed as members of the sewerage authority by the governing body of each municipality or county, to serve for terms commencing on February 1 in such year and expiring on February 1 in the fifth year after such year. In the event of a vacancy in the membership of the sewerage authority occurring during the unexpired term of office, a person shall be appointed as a member of the sewerage authority to serve for such unexpired term by the governing body which made the original appointment for such unexpired term.

Upon the expiration of the terms of office of members, in office on July 1, 1967, of sewerage authorities created by two or more municipalities or counties, where more than one member is appointed by any participating municipality or county, their immediate successors, except for appointments to fill vacancies, shall be appointed for designated terms of three, four or five years in the same manner as in this subsection (c) provided as to initial appointees.

(d) A copy of each resolution or ordinance for the creation of a sewerage authority adopted pursuant to this section, duly certified by the appropriate officer of the local unit, shall be filed in the

office of the Secretary of State. Upon proof of such filing of a certified copy of the resolution or ordinance or of certified copies of the parallel ordinances for the creation of a sewerage authority as aforesaid, the sewerage authority 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 sewerage authority, be conclusively deemed to have been lawfully and properly created and established and authorized to transact business and exercise its powers under this act. A copy of any such certified resolution or ordinance, duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any suit, action or proceeding.

(e) A copy of each resolution appointing any member of a sewerage authority adopted pursuant to this section, duly certified by the appropriate officer of the local unit, shall be filed in the office of the Secretary of State. A copy of such certified resolution, duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any suit, action or proceeding and, except in a suit, action or proceeding directly questioning such appointment, shall be conclusive evidence of the due and proper appointment of the member or members named therein.

(f) The governing body of a county which may create or join in the creation of any sewerage authority pursuant to this section shall not thereafter create or join in the creation of any other sewerage authority. No governing body of any municipality constituting the whole or any part of a district shall create or join in the creation of any sewerage authority except upon the written consent of the sewerage authority and in accordance with the terms and conditions of such consent, and in the event such consent be given and a sewerage authority be created pursuant thereto, the terms and conditions of such consent shall thereafter be in all respects binding upon such municipality and the sewerage authority so created, and any system of sewers or sewage disposal plants constructed or maintained in conformity with the terms and conditions of such consent by the sewerage authority so created shall be deemed not to be competitive with the sewerage systems of the sewerage authority giving such consent. In the event that prior to the creation of a sewerage authority of a county the governing body of any municipality located in said county shall have created or joined in the creation of a sewerage authority, the area within the territorial limits of such municipality shall not be part of the district of the sewerage authority of said county.

(g) Within 10 days after the filing in the office of the Secretary of State of a certified copy of a resolution for the creation of a sewerage authority adopted by the governing body of any county pursuant to this section, a copy of such resolution, duly certified by the appropriate officer of the county, shall be filed in the office of the clerk of each municipality within the county. In the event that the governing body of any such municipality shall, within 60 days after such filing in the office of the Secretary of State, adopt a resolution determining that such municipality shall not be a part of the district of such sewerage authority and file a copy thereof, duly certified by its clerk, in the office of the Secretary of State, the area within the territorial limits of such municipality shall not thereafter be part of such district, but at any time after the adoption of such resolution, the governing body of such municipality may, by ordinance duly adopted, determine that such area shall again be a part of such district, and if thereafter a copy of such ordinance, duly certified by the appropriate officer of such municipality, together with a certified copy of a resolution of such sewerage authority approving such ordinance, shall be filed in the office of the Secretary of State, then from and after such filing the area within the territorial limits of such municipality shall forever be part of such district.

(h) The governing body of any local unit which has created a sewerage authority pursuant to subsection (a) or subsection (b) of this section may, in the case of a county by resolution duly adopted or in the case of a municipality by ordinance duly adopted, dissolve such sewerage authority on the conditions set forth in this subsection. The governing bodies of two or more local units which have created a sewerage authority pursuant to subsection (c) of this section may, by parallel ordinances duly adopted by each of such governing bodies within any single calendar year, dissolve such sewerage authority on the conditions set forth in this subsection. Such a sewerage authority may be dissolved on condition that (1) either the members of such authority have not been appointed or the sewerage authority, by resolution duly adopted, consents to such dissolution, and (2) the sewerage authority has no debts or obligations outstanding. Upon the dissolution of any sewerage authority in the manner provided in this subsection, the governing body or bodies dissolving such sewerage authority shall be deemed never to have created or joined in the creation of a sewerage authority. A copy of each resolution or ordinance for the dissolution of a sewerage authority adopted pursuant to this subsection, duly certified by the appropriate

officer of the local unit, shall be filed in the office of the Secretary of State. Upon proof of such filing of a certified copy of the resolution or ordinance or of certified copies of the parallel ordinances for the dissolution of a sewerage authority as aforesaid and upon proof that such sewerage authority had no debts or obligations outstanding at the time of the adoption of such resolution, ordinance or ordinances, the sewerage authority therein referred to shall be conclusively deemed to have been lawfully and properly dissolved and the property of the sewerage authority shall be vested in the local unit or units. A copy of any such certified resolution or ordinance, duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any suit, action or proceeding.

(i) Whenever the sewerage authority of any county shall certify to the governing body of any county that it has entered into a contract pursuant to section 23 of this act with one or more municipalities situate within any other county, one additional member of the sewerage authority for each such other county shall be appointed by resolution of the governing body of such other county as in this section provided. The additional member so appointed for any such other county, and his successors, shall be a resident of one of said municipalities situate within such other county. The additional member first appointed or to be first appointed for any such other county shall serve for a term expiring on the first day of the fifth February next ensuing after the date of such appointment, and on or after January 1 in the year in which expires the term of the said additional member first appointed and in every fifth year thereafter, one person shall be appointed by said governing body as a member of the sewerage authority as successor to said additional member, to serve for a term commencing on February 1 in such year and expiring on February 1 in the fifth year after such year. If after such appointment of an additional member for any such other county the sewerage authority shall certify to said governing body of such other county that it is no longer a party to a contract entered into pursuant to section 23 of this act with any municipality situate within such other county, the term of office of such additional member shall thereupon cease and expire and no additional member for such other county shall thereafter be appointed.

(j) If a municipality, the governing body of which has created a sewerage authority pursuant to subsection (b) of this section, has been or shall be consolidated with another municipality, the governing body of the new consolidated municipality may, by

ordinance duly adopted, provide that the members of the sewerage authority shall thereafter be appointed by the governing body of such new consolidated municipality, which shall make appointment of members of the sewerage authority by resolution as hereinafter in this subsection provided. On or after the taking effect of such ordinance, one person shall be appointed as a member of the sewerage authority for a term commencing on February 1 in each year, if any, after the date of consolidation, in which has or shall have expired the term of a member of the sewerage authority theretofore appointed by the governing body of the municipality which has been or shall be so consolidated, and expiring on February 1 in the fifth year after such year. Thereafter, on or after January 1 in each year, one person shall be appointed as a member of the sewerage authority to serve for a term commencing on February 1 in such year and expiring February 1 in the fifth year after such year. In the event of a vacancy in the membership of the sewerage authority occurring during an unexpired term of office, a person shall be appointed as a member of the sewerage authority to serve for such unexpired term. Each member of the sewerage authority appointed by the governing body of a municipality which has been or shall be so consolidated shall continue in office until his successor has been appointed as in this subsection provided and has qualified.

(k) If a municipality, the governing body of which has created a sewerage authority pursuant to subsection (b) of this section, has been or shall be consolidated with another municipality, the governing body of the new consolidated municipality, subject to the rights of the holders, if any, of bonds issued by the sewerage authority, and upon receipt of the sewerage authority's written consent thereto, may provide, by ordinance duly adopted, that the area within the territorial boundaries of the new consolidated municipality shall constitute the district of the sewerage authority, and upon the taking effect of such ordinance, such area shall constitute the district of the sewerage authority. Until the taking effect of such ordinance, the district of the sewerage authority shall be the area within the territorial boundaries, as they existed at the date of the consolidation, of the municipality the governing body of which created the sewerage authority.

(l) Whenever, with the approval of any sewerage authority created by the governing bodies of two or more municipalities, any other municipality not constituting part of the district shall convey to the sewerage authority all or any part of a system of main,

lateral or other sewers or other sewerage facilities located within the district and theretofore owned and operated by such other municipality, then, if so provided in the instruments of such conveyance, one additional member of the sewerage authority for such other municipality shall be appointed by resolution of its governing body as in this section provided. The additional member so appointed for such municipality, and his successors, shall be residents of such municipality. The additional member first appointed or to be first appointed for such municipality shall serve for a term expiring on the first day of the fifth February next ensuing after the date of such appointment, and on or after January 1 in the year in which expires the term of the said additional member first appointed and in every fifth year thereafter, one person shall be appointed by said governing body as a member of the sewerage authority as successor to said additional member, to serve for a term commencing on February 1 in such year and expiring on February 1 in the fifth year after such year. If at any time after such conveyance of sewers or sewerage facilities by a municipality its governing body shall adopt a resolution determining not thereafter to be represented in the membership of the sewerage authority and shall file a copy thereof duly certified by its clerk in the office of the sewerage authority, the term of office of any such additional member theretofore appointed for such municipality shall thereupon cease and expire and no additional member for such municipality shall thereafter be appointed.

(m)(i) The governing body of any municipality which is contiguous to the district of a sewerage authority created by the governing bodies of two or more other municipalities may at any time, by ordinance duly adopted, propose that the whole or any part of the area herein referred to as "service area" within the territorial limits of such municipality shall be a part of said contiguous district. Such ordinance shall (1) state the number of members of the sewerage authority, not less than one nor more than three, thereafter to be appointed for full terms of office by the governing body of such municipality, and (2) determine that, after the filing of a certified copy thereof and of a resolution of the sewerage authority in accordance with this subsection, such service area shall be a part of said contiguous district. If thereafter a copy of such ordinance duly certified by the appropriate officer of such municipality, together with a certified copy of a resolution of said sewerage authority approving such ordinance, shall be filed in the office of the Secretary of State, then from and

after such filing the service area shall forever be part of said contiguous district and said sewerage authority shall consist of the members thereof acting or appointed as in this section provided and constitute an agency and instrumentality of such municipality, as well as such other municipalities. The governing body of the said municipality so becoming part of said contiguous district shall thereupon appoint members of the sewerage authority in the number stated in such ordinance, for periods and in the manner provided for the first appointment of members of a sewerage authority under subsection (c) of this section.

(ii) If the service area of such municipality shall then be part of the district of any other sewerage authority or municipal authority, such other authority shall, by resolution adopted not more than one year prior to the adoption of such ordinance, consent to the inclusion of the service area in the district of said contiguous district, and the service area shall become part of said contiguous district as aforesaid and shall no longer be part of the district of such other authority for sewerage purposes. If only part of the area within the territorial limits of such municipality shall constitute the service area to become part of said contiguous district, the service area shall be that so designated or shown on a map thereof bearing legend or reference to this section and filed in the office of the clerk of such municipality and in the office of the secretary of each authority referred to in this section, and such map shall be incorporated by a reference thereto in such ordinance and resolution as or for a description of the service area. For all the purposes of this act, such sewerage authority shall be deemed to have been created by the governing body of such municipality jointly with the other municipalities (the territorial areas of which constitute the district of such contiguous authority), and such municipality shall have all powers, duties, rights and obligations provided for by this act or any other law for or with respect to such sewerage authority or any other sewerage authority or municipal authority, notwithstanding that only a part of the area within the territorial limits of such municipality shall become part of said contiguous district.

(n) The governing body of a county or municipality may provide, in the ordinance or resolution creating the sewerage authority, for not more than two alternate members. Alternate members shall be designated by the governing body as "Alternate No. 1" and "Alternate No. 2" and shall serve during the absence or disqualification of any regular member or members. The gov-



erning body of the county or municipality shall provide by ordinance or resolution for the order in which the alternates shall serve. The term of each alternate member shall be five years commencing on February 1 of the year of appointment; provided, however, that in the event two alternate members are appointed their initial terms shall be four and five years, respectively. The terms of the first alternate members appointed pursuant to this amendatory act shall commence on the dates of their appointments and shall expire on the fourth or fifth January 31 next ensuing after the dates of their appointments, as the case may be. Alternate members may participate in discussions of the proceedings but may not vote, except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member.

(o) Whenever any sewerage authority has entered into a contract for the treatment or disposal of sewage originating in the district, pursuant to section 23 of P.L.1946, c.138 (C.40:14A-23), with any contiguous sewerage authority, then, with the approval of the contiguous sewerage authority, the sewerage authority may appoint, by resolution duly adopted, two additional members to the contiguous sewerage authority, as provided in this subsection. The additional members shall be either residents of the district of the sewerage authority or members or the executive director of the sewerage authority. The additional members shall serve five year terms, except that the additional members first appointed shall serve for terms respectively expiring on the first days of the fourth and fifth Februaries next ensuing after the dates of their appointments. On or after January 1 in the years in which the terms of the additional members expire, one person shall be appointed by the sewerage authority as a member of the contiguous sewerage authority as successor to the additional member, to serve for a term commencing on February 1 of that year. Vacancies shall be filled in the manner of the original appointments but for the unexpired terms only. If a sewerage authority has entered into a contract with a contiguous sewerage authority for the treatment or disposal of sewage, and thereafter adopts a resolution determining not to be represented in the membership of the contiguous sewerage authority and files a copy thereof, duly certified by its secretary, in the office of the contiguous sewerage authority, the terms of office of any additional members shall cease and no additional members shall be appointed thereafter.

2. Section 4 of P.L.1948, c.348 (C.40:66A-4) is amended to read as follows:

**C.40:66A-4 Creation of incinerator authorities.**

4. (a) The governing body of any municipality may, by ordinance duly adopted, create a public body corporate and politic under the name and style of "the ..... incinerator authority" with all or any significant part of the name of such municipality inserted. An incinerator authority created pursuant to this section by a municipality other than a city of the first class shall consist of five members, and an incinerator authority created pursuant to this section by a municipality which is a city of the first class shall consist of five or seven members, as determined by the governing body. Members of the incinerator authority shall be appointed by resolution of the governing body as hereinafter in this section provided, and the authority shall constitute the incinerator authority contemplated and provided for in this act and an agency and instrumentality of said municipality. After the taking effect of such ordinance and the filing of a certified copy thereof as in subsection (c) of this section provided, the members of the incinerator authority shall be appointed. The members first appointed shall, by the resolution of appointment, be designated to serve for terms respectively expiring as follows: the terms of the first four members shall expire in turn on each of the first days of the first, second, third and fourth Februaries next ensuing after the date of their appointment, and the remaining members shall be designated to serve for terms expiring on the first day of the fifth February next ensuing after the date of their appointment. On or after the first day of January in each year after such first appointments, one person shall be appointed or reappointed as a member of the incinerator authority to succeed each member whose term is expiring, and shall serve for a term commencing on the first day of February in such year and expiring on the first day of February in the fifth year after such year. In the event of a vacancy in the membership of the incinerator authority occurring during an unexpired term of office, a person shall be appointed as a member of the incinerator authority to serve for such unexpired term.

The governing body of a municipality which is a city of the first class may increase the membership of its incinerator authority to seven members from five members. The two additional members shall be appointed to serve five-year terms, commencing on the February 1 next following their appointment and expiring on February 1 in the fifth year after their appointment.

(b) The governing bodies of any two or more municipalities, whether or not the areas of such municipalities comprise an integral body of territory, may, by parallel ordinances duly adopted by each of such governing bodies within any single calendar year,

create a public body corporate and politic under the name and style of "the ..... incinerator authority" with all or any significant part of the name of each such municipality or some identifying geographical phrase inserted. Said body shall consist of the members thereof, in an aggregate number determined as hereinafter in this subsection provided, who shall be appointed by resolution of the several governing bodies as hereinafter in this section provided, and it shall constitute the incinerator authority contemplated and provided for in this act and an agency and instrumentality of the said municipalities. The number of members of the incinerator authority to be appointed at any time for full terms of office by the governing body of any such municipality, shall be as may be stated in said ordinances which shall be not less than one nor more than three. After the taking effect of the said ordinances of all such municipalities and after the filing of certified copies thereof as in subsection (c) of this section provided, the appropriate number of persons shall be appointed as members of the incinerator authority by the governing body of each municipality. The members first appointed or to be first appointed shall serve for terms expiring on the first day of the fifth February next ensuing after the date of the first appointment of any member. On or after the first day of January in the year in which expires the terms of the said members first appointed and in every fifth year thereafter, the appropriate number of persons shall be appointed as members of the incinerator authority by the governing body of each municipality, to serve for terms commencing on the first day of February in such year and expiring on the first day of February in the fifth year after such year. In the event of a vacancy in the membership of the incinerator authority occurring during an unexpired term of office, a person shall be appointed as a member of the incinerator authority to serve for such unexpired term by the governing body which made the original appointment for such unexpired term.

(c) A copy of each ordinance for the creation of an incinerator authority adopted pursuant to this section, duly certified by the appropriate officer of the local unit, shall be filed in the office of the Secretary of State. Upon proof of such filing of a certified copy of the ordinance or of certified copies of the parallel ordinances for the creation of an incinerator authority as aforesaid, the incinerator authority 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 incinerator authority, be conclusively deemed to have been lawfully and properly created and established and authorized to transact business and exercise its powers under this act. A copy of any such certified ordinance,

duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any suit, action or proceeding.

(d) A copy of each resolution appointing any member of an incinerator authority adopted pursuant to this section, duly certified by the appropriate officer of the local unit, shall be filed in the office of the Secretary of State. A copy of such certified resolution, duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any suit, action or proceeding and, except in a suit, action or proceeding directly questioning such appointment, shall be conclusive evidence of the due and proper appointment of the members named therein.

(e) No governing body which may create or join in the creation of any incinerator authority pursuant to this section shall thereafter create or join in the creation of any other incinerator authority. No governing of any municipality within a district shall create or join in the creation of any incinerator authority except upon the written consent of the incinerator authority and in accordance with the terms and conditions of such consent, and in the event such consent be given and an incinerator authority be created pursuant thereto, the area within the territorial boundaries of such municipality shall not thereafter be part of the district.

3. This act shall take effect immediately.

Approved August 3, 1994.

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## CHAPTER 86

AN ACT concerning employees of the Administrative Office of the Courts and amending N.J.S.2A:12-2.

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

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

**Employees; other gainful pursuits forbidden; civil service.**

2A:12-2. Employees; other gainful pursuits forbidden; civil service.

The director, with the approval of the chief justice, shall appoint and fix the salaries of such employees as may be neces-

sary to perform the duties vested in him by this chapter. The director and such employees shall not engage directly or indirectly in the practice of law and shall not be subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes.

2. This act shall take effect immediately.

Approved August 3, 1994.

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#### CHAPTER 87

AN ACT concerning housing for low-income and disabled individuals, amending and supplementing P.L.1991, c.431 (C.40A:20-3 et seq.).

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

1. Section 3 of P.L.1991, c.431 (C.40A:20-3) is amended to read as follows:

**C.40A:20-3 Definitions.**

3. As used in this act:

a. "Gross revenue" means annual gross revenue or gross shelter rent or annual gross rents, as appropriate, and other income, for each urban renewal entity designated pursuant to this act. The financial agreement shall establish the method of computing gross revenue for the entity, and the method of determining insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, which shall be included in the gross revenue; provided, however, that any federal funds received, whether directly or in the form of rental subsidies paid to tenants, by a nonprofit corporation that is the sponsor of a qualified subsidized housing project, shall not be included in the gross revenue of the project for purposes of computing the annual services charge for municipal services supplied to the project.

b. "Limited-dividend entity" means an urban renewal entity incorporated pursuant to Title 14A of the New Jersey Statutes, or established pursuant to Title 42 of the Revised Statutes, for which the profits and the entity are limited as follows. The allowable net profits of the entity shall be determined by applying the allowable profit rate to each total project unit cost, if the project

is undertaken in units, or the total project cost, if the project is not undertaken in units, for the period commencing on the date on which the construction of the unit or project is completed, and terminating at the close of the fiscal year of the entity preceding the date on which the computation is made, where:

“Allowable profit rate” means the percentage per annum arrived at by adding 1 1/4% to the annual interest percentage rate payable on the entity’s initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing the allowable profit rate shall be arrived at by adding 1 1/4% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in the county.

c. “Net profit” means the gross revenues of the urban renewal entity less all operating and non-operating expenses of the entity, all determined in accordance with generally accepted accounting principles, but:

(1) there shall be included in expenses: (a) all annual service charges paid pursuant to section 12 of P.L.1991, c.431 (C.40A:20-12); (b) all payments to the municipality of excess profits pursuant to section 15 or 16 of P.L.1991, c.431 (C.40A:20-15 or 40A:20-16); (c) an annual amount sufficient to amortize the total project cost over the life of the improvements, as set forth in the financial agreement, which shall not be less than the terms of the financial agreement; and (d) all reasonable annual operating expenses of the urban renewal entity, including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies, and payments into repair or maintenance reserve accounts;

(2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, income taxes, or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding any proprietary ownership interest in the entity.

The urban renewal entity shall provide to the municipality an annual audited statement which clearly identifies the calculation of net profit for the urban renewal entity during the previous year. The annual audited statement shall be prepared by a certified pub-

lic accountant and shall be submitted to the municipality within 90 days of the close of the fiscal year.

d. "Nonprofit entity" means an urban renewal entity incorporated pursuant to Title 15A of the New Jersey Statutes for which no part of its net profits inures to the benefit of its members.

e. "Project" means any work or undertaking pursuant to a redevelopment plan adopted pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.), which has as its purpose the redevelopment of all or any part of a redevelopment area including any industrial, commercial, residential or other use, and may include any buildings, land, including demolition, clearance or removal of buildings from land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and administrative, community, health, recreational, educational and welfare facilities.

f. "Redevelopment area" means an area determined to be in need of redevelopment and for which a redevelopment plan has been adopted by a municipality pursuant to the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.).

g. "Urban renewal entity" means a limited-dividend entity or a nonprofit entity which enters into a financial agreement pursuant to this act with a municipality to undertake a project pursuant to a redevelopment plan for the redevelopment of all or any part of a redevelopment area, or a project necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or any part of one or more redevelopment areas, or a low and moderate income housing project.

h. "Total project unit cost" or "total project cost" means the aggregate of the following items as related to a unit of a project, if the project is undertaken in units, or to the total project, if the project is not undertaken in units, all of which as limited by, and approved as part of the financial agreement: (1) cost of the land and improvements to the entity, whether acquired from a private or a public owner, with cost in the case of leasehold interests to be computed by capitalizing the aggregate rental at a rate provided in the financial agreement; (2) architect, engineer and attorney fees, paid or payable by the entity in connection with the planning, construction and financing of the project; (3) surveying and testing charges in connection therewith; (4) actual construction costs which the entity shall cause to be certified and verified

to the municipality and the municipal governing body by an independent and qualified architect, including the cost of any preparation of the site undertaken at the entity's expense; (5) insurance, interest and finance costs during construction; (6) costs of obtaining initial permanent financing; (7) commissions and other expenses paid or payable in connection with initial leasing; (8) real estate taxes and assessments during the construction period; (9) a developer's overhead based on a percentage of actual construction costs, to be computed at not more than the following schedule:

\$500,000 or less	-10%
\$500,000 through \$1,000,000	- \$50,000 plus 8% on excess above \$500,000
\$1,000,001 through \$2,000,000	- \$90,000 plus 7% on excess above \$1,000,000
\$2,000,001 through \$3,500,000	-\$160,000 plus 5.6667% on excess above \$2,000,000
\$3,500,001 through \$5,500,000	-\$245,000 plus 4.25% on excess above \$3,500,000
\$5,500,001 through \$10,000,000	-\$330,000 plus 3.7778% on excess above \$5,500,000
over \$10,000,000	-5%

If the financial agreement so provides, there shall be excluded from the total project cost actual costs incurred by the entity and certified to the municipality by an independent and qualified architect or engineer which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or federal law.

i. "Housing project" means any work or undertaking to provide decent, safe, and sanitary dwellings for families in need of housing; the undertaking may include any buildings, land (including demolition, clearance or removal of buildings from land), equipment, facilities, or other real or personal properties or interests therein which are necessary, convenient or desirable appurtenances of the undertaking, such as, but not limited to, streets, sewers, water, utilities, parks; site preparation; landscaping, and administrative, community, health, recreational, educational, welfare, commercial, or other facilities, or to provide any part or combination of the foregoing.



j. "Redevelopment relocation housing project" means a housing project which is necessary, useful or convenient for the relocation of residents displaced by redevelopment of all or any part of one or more redevelopment areas.

k. "Low and moderate income housing project" means a housing project which is occupied, or is to be occupied, exclusively by households whose incomes do not exceed income limitations established pursuant to any State or federal housing program.

l. "Qualified subsidized housing project" means a low and moderate income housing project owned by a nonprofit corporation organized under the provisions of Title 15A of the New Jersey Statutes for the purpose of developing, constructing and operating rental housing for senior citizens under section 202 of Pub.L. 86-372 (12 U.S.C. §1701q) or rental housing for persons with disabilities under section 811 of Pub.L. 101-625 (42 U.S.C. §8013), or under any other federal program that the Commissioner of Community Affairs by rule may determine to be of a similar nature and purpose.

**C.40A:20-5.1 Urban renewal entity; qualification.**

2. The provisions of section 5 of P.L.1991, c.431 (C.40A:20-5) to the contrary notwithstanding, a nonprofit corporation organized for the purpose of developing, constructing and operating a qualified subsidized housing project may qualify as an urban renewal entity under P.L.1991, c.431 (C.40A:20-1 et seq.) if its certificate of incorporation is in conformity with the requirements of the federal agency subsidizing the project.

**C.40A:20-12.1 Nonapplicability of certain annual service charges.**

3. The provisions of section 12 of P.L.1991, c.431 (C.40A:20-12) requiring staged increases in annual service charges over the term of the financial agreement and establishing a minimum annual service charge shall not apply to qualified subsidized housing projects.

**C.40A:20-13.1 Tax exemption.**

4. The provisions of sections 12 and 13 of P.L.1991, c.431 (C.40A:20-12 and C.40A:20-13) to the contrary notwithstanding, a qualified subsidized housing project may be exempted from taxation for such period of time as the federal agency subsidizing the project may require as a condition of the subsidy. The exemption from taxation may be extended for an additional period of time as may be required in order to secure a continuation of federal subsidies after the expiration of the initial subsidy period.

**C.40A:20-16.1 Payment of net profits to municipality; condition.**

5. The provisions of section 16 of P.L.1991, c.431 (C.40A:20-16) to the contrary notwithstanding, a nonprofit corporation that is the sponsor of a qualified subsidized housing project shall not be required to pay over to the municipality its net profits, if any, for any year in which it is subject to federal requirements concerning residual receipts.

6. This act shall take effect immediately and be retroactive to April 17, 1992.

Approved August 3, 1994.

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**CHAPTER 88**

**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 district meeting or 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 notices to persons desiring military service and civilian absentee ballots were not published in accordance with the provisions of section 7 of the "Absentee Voting Law," P.L.1953, c.211 (C.19:57-7) or as required by N.J.S.18A:14-25; 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 August 3, 1994.

## CHAPTER 89

AN ACT concerning eligibility requirements for certification as a municipal finance officer and for appointment as chief financial officer in certain municipalities.

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

1. A person who, prior to July 1, 1993, has served for 15 continuous years as municipal treasurer of a municipality that has a population of fewer than 1300 persons according to the latest federal decennial census and is located in a county of the sixth class, shall be eligible to take the examination for certification as a municipal finance officer, notwithstanding that the person has not furnished proof of satisfactory completion of the training courses required under subsections c. and d. of section 2 of P.L.1971, c.413 (C.40A:9-140.2). Upon successful completion of the examination and payment of the fee required under section 3 of P.L.1971, c.413 (C.40A:9-140.3), the Director of the Division of Local Government Services in the Department of Community Affairs shall issue to the person a municipal finance officer certificate on which it is noted that the person shall be eligible to be appointed as chief financial officer only in the same municipality in which the person has served as municipal treasurer for 15 continuous years prior to July 1, 1993.

2. This act shall take effect immediately and shall expire one year after enactment.

Approved August 5, 1994.

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CHAPTER 90

AN ACT concerning trespassing on school property and amending N.J.S.2C:18-3.

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

1. N.J.S.2C:18-3 is amended to read as follows:

**Unlicensed entry of structures; defiant trespasser; defenses.**

2C:18-3. a. Unlicensed entry of structures. A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any structure, or separately secured or occupied portion thereof. An offense under this subsection is a crime of the fourth degree if it is committed in a school or on school property. The offense is a crime of the fourth degree if it is committed in a dwelling. Otherwise it is a disorderly persons offense.

b. Defiant trespasser. A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

- (1) Actual communication to the actor; or
- (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
- (3) Fencing or other enclosure manifestly designed to exclude intruders.

c. Defenses. It is an affirmative defense to prosecution under this section that:

- (1) A structure involved in an offense under subsection a. was abandoned;
- (2) The structure was at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the structure; or
- (3) The actor reasonably believed that the owner of the structure, or other person empowered to license access thereto, would have licensed him to enter or remain.

2. This act shall take effect immediately.

Approved August 9, 1994.

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**CHAPTER 91**

**AN ACT concerning the offense of attempting to lure a child under certain circumstances and amending P.L.1993, c.291.**

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

1. Section 1 of P.L.1993, c.291 (C.2C:13-6) is amended to read as follows:

**C.2C:13-6 Luring, enticing child into motor vehicle, structure or isolated area, 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, structure or isolated area 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.

“Structure” as used in this act means any building, room, ship, vessel or airplane and also means any place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.

Nothing herein shall be deemed to preclude, if the evidence so warrants, an indictment and conviction for attempted kidnapping under the provisions of N.J.S.2C:13-1.

2. This act shall take effect immediately.

Approved August 9, 1994.

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## CHAPTER 92

AN ACT concerning certain presentence reports and amending N.J.S.2C:44-6.

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

1. N.J.S.2C:44-6 is amended to read as follows:

**Procedure on sentence; presentence investigation and report.**

**2C:44-6. Procedure on Sentence; Presentence Investigation and Report.**

a. The court shall not impose sentence without first ordering a presentence investigation of the defendant and according due consideration to a written report of such investigation when required by the Rules of Court. The court may order a presentence investigation in any other case.

b. The presentence investigation shall include an analysis of the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, family situation, financial resources, debts, including any amount owed for a fine, assessment or restitution ordered in accordance to the provisions of Title 2C, employment history, personal habits, the disposition of

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any charge made against any codefendants and may include a report on his physical and mental condition and any other matters that the probation officer deems relevant or the court directs to be included. In any case involving a conviction of N.J.S.2C:24-4, endangering the welfare of a child; N.J.S.2C:18-3, criminal trespass, where the trespass was committed in a school building or on school property; section 1 of P.L.1993, c.291 (C.2C:13-6), attempting to lure or entice a child with purpose to commit a criminal offense; section 1 of P.L.1992, c.209 (C.2C:12-10), stalking; or N.J.S.2C:13-1, kidnapping, where the victim of the offense is a child under the age of 18, the investigation shall include a report on the defendant's mental condition unless the court directs otherwise. The presentence report shall also include a report on any compensation paid by the Violent Crimes Compensation Board as a result of the commission of the offense and, in any case where the victim chooses to provide one, a statement by the victim of the offense for which the defendant is being sentenced. The statement may include the nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss to include loss of earnings or ability to work suffered by the victim and the effect of the crime upon the victim's family. The probation department shall notify the victim or nearest relative of a homicide victim of his right to make a statement for inclusion in the presentence report if the victim or relative so desires. Any such statement shall be made within 20 days of notification by the probation department.

The presentence report shall specifically include an assessment of the gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance.

c. If, after the presentence investigation, the court desires additional information concerning an offender convicted of an offense before imposing sentence, it may order that he be examined as to his medical or mental condition, except that he may not be committed to an institution for such examination.

d. Disclosure of any presentence investigation report or psychiatric examination report shall be in accordance with law and the Rules of Court, except that information concerning the defendant's financial resources shall be made available upon request to the Violent Crimes Compensation Board or to any officer authorized

under the provisions of section 3 of P.L.1979, c.396 (C.2C:46-4) to collect payment on an assessment, restitution or fine.

e. The court shall not impose a sentence of imprisonment for an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. The defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

f. (Deleted by amendment, P.L.1986, c.85).

2. This act shall take effect immediately.

Approved August 9, 1994.

### CHAPTER 93

AN ACT concerning domestic violence and amending P.L.1991, c.261.

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

1. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to read as follows:

**C.2C:25-19 Definitions.**

3. As used in this act:

a. "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:

(1) Homicide	N.J.S.2C:11-1 et seq.
(2) Assault	N.J.S.2C:12-1
(3) Terroristic threats	N.J.S.2C:12-3
(4) Kidnapping	N.J.S.2C:13-1
(5) Criminal restraint	N.J.S.2C:13-2
(6) False imprisonment	N.J.S.2C:13-3
(7) Sexual assault	N.J.S.2C:14-2
(8) Criminal sexual contact	N.J.S.2C:14-3
(9) Lewdness	N.J.S.2C:14-4
(10) Criminal mischief	N.J.S.2C:17-3
(11) Burglary	N.J.S.2C:18-2
(12) Criminal trespass	N.J.S.2C:18-3
(13) Harassment	N.J.S.2C:33-4

When one or more of these acts is inflicted by an unemancipated minor upon a person protected under this act, the occurrence shall not constitute "domestic violence," but may be the basis for the filing of a petition or complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

b. "Law enforcement agency" means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

c. "Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

d. "Victim of domestic violence" means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member, or a person with whom the victim has a child in common. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

e. "Emancipated minor" means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

2. Section 4 of P.L.1991, c.261 (C.2C:25-20) is amended to read as follows:

**C.2C:25-20 Development of training course, curriculum.**

4. The Division of Criminal Justice shall develop and approve a training course and curriculum on the handling, investigation and response procedures concerning reports of domestic violence and abuse and neglect of the elderly and disabled. This training course and curriculum shall be reviewed at least every two years and modified by the Division of Criminal Justice from time to time as need may require. The Division of Criminal Justice shall distribute the curriculum to all local police agencies. The Attorney General shall be responsible for ensuring that all law enforcement officers attend initial training within 90 days of appointment or transfer and biannual inservice training as described in this section.



The Administrative Office of the Courts shall develop and approve a training course and a curriculum on the handling, investigation and response procedures concerning allegations of domestic violence. This training course shall be reviewed at least every two years and modified by the Administrative Office of the Courts from time to time as need may require. The Administrative Director of the Courts shall be responsible for ensuring that all judges and judicial personnel attend initial training within 90 days of appointment or transfer and biannual inservice training as described in this section.

The Division of Criminal Justice and the Administrative Office of the Courts shall provide that all training on the handling of domestic violence matters shall include information concerning the impact of domestic violence on society, the dynamics of domestic violence, the statutory and case law concerning domestic violence, the necessary elements of a protection order, policies and procedures as promulgated or ordered by the Attorney General or the Supreme Court, and the use of available community resources, support services, available sanctions and treatment options. Law enforcement agencies shall either establish domestic crisis teams or train individual officers in methods of dealing with domestic violence and neglect and abuse of the elderly and disabled. The teams may include social workers, clergy or other persons trained in counseling, crisis intervention or in the treatment of domestic violence and neglect and abuse of the elderly and disabled victims.

3. Section 14 of P.L.1991, c.261 (C.2C:25-30) is amended to read as follows:

**C.2C:25-30 Violations, penalties.**

14. Except as provided below, a violation by the defendant of an order issued pursuant to this act shall constitute an offense under subsection b. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings conducted pursuant to N.J.S.2C:29-9 involving domestic violence orders, other than those constituting indictable offenses, shall be heard by the Family Part of the Chancery Division of the Superior Court. All contempt proceedings brought pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.) shall be subject to any rules or guidelines established by the Supreme Court to guarantee the prompt disposition of criminal matters. Additionally, and notwithstanding the term of imprisonment provided in N.J.S.2C:43-8, any person convicted of a second or subsequent

nonindictable domestic violence contempt offense shall serve a minimum term of not less than 30 days. Orders entered pursuant to paragraphs (3), (4), (8) and (9) of subsection b. of section 13 of this act shall be excluded from enforcement under subsection b. of N.J.S.2C:29-9; however, violations of these orders may be enforced in a civil or criminal action initiated by the plaintiff or by the court, on its own motion, pursuant to applicable court rules.

4. This act shall take effect immediately.

Approved August 11, 1994.

#### CHAPTER 94

AN ACT concerning domestic violence and amending P.L.1991, c.261.

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

1. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to read as follows:

**C.2C:25-19 Definitions.**

3. As used in this act:

a. "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:

- |                             |                                |
|-----------------------------|--------------------------------|
| (1) Homicide                | N.J.S.2C:11-1 et seq.          |
| (2) Assault                 | N.J.S.2C:12-1                  |
| (3) Terroristic threats     | N.J.S.2C:12-3                  |
| (4) Kidnapping              | N.J.S.2C:13-1                  |
| (5) Criminal restraint      | N.J.S.2C:13-2                  |
| (6) False imprisonment      | N.J.S.2C:13-3                  |
| (7) Sexual assault          | N.J.S.2C:14-2                  |
| (8) Criminal sexual contact | N.J.S.2C:14-3                  |
| (9) Lewdness                | N.J.S.2C:14-4                  |
| (10) Criminal mischief      | N.J.S.2C:17-3                  |
| (11) Burglary               | N.J.S.2C:18-2                  |
| (12) Criminal trespass      | N.J.S.2C:18-3                  |
| (13) Harassment             | N.J.S.2C:33-4                  |
| (14) Stalking               | P.L.1992,c.209<br>(C.2C:12-10) |

When one or more of these acts is inflicted by an unemancipated minor upon a person protected under this act, the occurrence shall not constitute "domestic violence," but may be the basis for the filing of a petition or complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

b. "Law enforcement agency" means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

c. "Law enforcement officer" means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

d. "Victim of domestic violence" means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

e. "Emancipated minor" means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

2. Section 6 of P.L.1991, c.261 (C.2C:25-22) is amended to read as follows:

**C.2C:25-22 Immunity from civil liability.**

6. A law enforcement officer or a member of a domestic crisis team or any person who, in good faith, reports a possible incident of domestic violence to the police shall not be held liable in any civil action brought by any party for an arrest based on probable cause, enforcement in good faith of a court order, or any other act or omission in good faith under this act.

3. Section 10 of P.L.1991, c.261 (C.2C:25-26) is amended to read as follows:

**C.2C:25-26 Release of defendant before trial; conditions.**

10. a. When a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may as a condition of release issue an order prohibiting the defendant from having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, and from harassing or stalking the victim or victim's relatives in any way. The court may enter an order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

b. The written court order releasing the defendant shall contain the court's directives specifically restricting the defendant's ability to have contact with the victim or the victim's friends, co-workers or relatives. The clerk of the court or other person designated by the court shall provide a copy of this order to the victim forthwith.

c. The victim's location shall remain confidential and shall not appear on any documents or records to which the defendant has access.

d. Before bail is set, the defendant's prior record shall be considered by the court. Bail shall be set as soon as is feasible, but in all cases within 24 hours of arrest.

e. Once bail is set it shall not be reduced without prior notice to the county prosecutor and the victim. Bail shall not be reduced by a judge other than the judge who originally ordered bail, unless the reasons for the amount of the original bail are available to the judge who reduces the bail and are set forth in the record.

f. A victim shall not be prohibited from applying for, and a court shall not be prohibited from issuing, temporary restraints pursuant to this act because the victim has charged any person with commission of a criminal act.

4. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to read as follows:

**C.2C:25-28 Filing complaint alleging domestic violence in Family Part; proceedings.**

12. a. A victim may file a complaint alleging the commission of an act of domestic violence with the Family Part of the Chan-

cery Division of the Superior Court in conformity with the Rules of Court. The court shall not dismiss any complaint or delay disposition of a case because the victim has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not prevent the filing of a criminal complaint for the same act.

On weekends, holidays and other times when the court is closed, a victim may file a complaint before a judge of the Family Part of the Chancery Division of the Superior Court or a municipal court judge who shall be assigned to accept complaints and issue emergency, ex parte relief in the form of temporary restraining orders pursuant to this act.

A plaintiff may apply for relief under this section in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications. Criminal complaints filed pursuant to this act shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the county where the contempt is alleged to have been committed and a copy of the contempt complaint shall be forwarded to the court that issued the order alleged to have been violated.

b. The court shall waive any requirement that the petitioner's place of residence appear on the complaint.

c. The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer or other pleading.

d. Summons and complaint forms shall be readily available at the clerk's office, at the municipal courts and at municipal and State police stations.

e. As soon as the domestic violence complaint is filed, both the victim and the abuser shall be advised of any programs or services available for advice and counseling.

f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.

g. If it appears that the plaintiff is in danger of domestic violence, the judge shall, upon consideration of the plaintiff's

domestic violence complaint, order emergency ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith.

h. A judge may issue a temporary restraining order upon sworn testimony or complaint of an applicant who is not physically present, pursuant to court rules, or by a person who represents a person who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

i. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Family Part issues a further order. Any temporary order hereunder is immediately appealable for a plenary hearing de novo not on the record before any judge of the Family Part of the county in which the plaintiff resides or is sheltered if that judge issued the temporary order or has access to the reasons for the issuance of the temporary order and sets forth in the record the reasons for the modification or dissolution. The denial of a temporary restraining order by a municipal court judge and subsequent administrative dismissal of the complaint shall not bar the victim from refiling a complaint in the Family Part based on the same incident and receiving an emergency, ex parte hearing de novo not on the record before a Family Part judge, and every denial of relief by a municipal court judge shall so state.

j. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant to possess any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located and any other appropriate relief. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

k. The judge may permit the defendant to return to the scene of the domestic violence to pick up personal belongings and effects but shall, in the order granting relief, restrict the time and duration of such permission and provide for police supervision of such visit.

l. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides

or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

m. (Deleted by amendment, P.L.1994, c.94.)

n. Notice of temporary restraining orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

o. (Deleted by amendment, P.L.1994, c.94.)

p. Any temporary or permanent restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

5. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to read as follows:

**C.2C:25-29 Hearing procedure; relief.**

13. a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of this act in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

(1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;

- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and visitation the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person. The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this act, no party shall be ordered to participate in mediation on the issue of custody or visitation.

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

(1) An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act.

(2) An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim's rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing.

(3) An order providing for visitation. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of visitation. Visitation arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for visitation may include a designation of a place of visitation away from the plaintiff, the participation of a third party, or supervised visitation.



(a) The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with visitation rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a visitation order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious.

(b) The court shall consider suspension of the visitation order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the visitation order has threatened the safety and well-being of the child.

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Violent Crimes Compensation Board for any and all compensation paid by the Violent Crimes Compensation Board directly to or on behalf of the victim, and may require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

(5) An order requiring the defendant to receive professional domestic violence counseling from either a private source or a source appointed by the court and, in that event, at the court's discretion requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling.

(6) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members.

(7) An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action.

(9) An order granting either party temporary possession of specified personal property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

(10) An order awarding emergency monetary relief, including emergency support for minor children, to the victim and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law.

(11) An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent.

(12) An order requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted in duration.

(13) An order which permits the victim and the defendant to occupy the same premises but limits the defendant's use of that premises, but only if it is documented by the judge granting the order that:

(a) The plaintiff specifically and voluntarily requests such an order; and

(b) The judge determines that the request is made voluntarily and with the plaintiff's knowledge that the order may not provide the same protection as an order excluding the defendant from the premises and with the plaintiff's knowledge that the order may be difficult to enforce; and

(c) Any conditions placed upon the defendant in connection with the continued access to the premises and any penalties for

noncompliance with those conditions shall be explicitly set out in the order and shall be in addition to any other remedies for non-compliance available to the victim.

(14) An order granting any other appropriate relief for the plaintiff and dependent children, provided that the plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order.

(15) An order that requires that the defendant report to the intake unit of the Family Part of the Chancery Division of the Superior Court for monitoring of any other provision of the order.

(16) An order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(17) An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the complainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to, behavior prohibited under the provisions of P.L.1992, c.209 (C.2C:12-10).

c. Notice of orders issued pursuant to this section shall be sent by the clerk of the Family Part of the Chancery Division of the Superior Court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

d. Upon good cause shown, any final order may be dissolved or modified upon application to the Family Part of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based.

6. Section 14 of P.L.1991, c.261 (C.2C:25-30) is amended to read as follows:

**C.2C:25-30 Violations, penalties.**

14. Except as provided below, a violation by the defendant of an order issued pursuant to this act shall constitute an offense under subsection b. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings conducted pursuant to N.J.S.2C:29-9 involving domestic violence orders, other than those constituting indictable offenses, shall be heard by the Family Part of the Chancery Division of the Superior Court. All contempt proceedings brought pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.) shall be subject to any rules or guidelines established by the Supreme Court to guarantee the prompt disposition of criminal matters. Additionally, and notwithstanding the term of imprisonment provided in N.J.S.2C:43-8, any person convicted of a second or subsequent nonindictable domestic violence contempt offense shall serve a minimum term of not less than 30 days. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of this act shall be excluded from enforcement under subsection b. of N.J.S.2C:29-9; however, violations of these orders may be enforced in a civil or criminal action initiated by the plaintiff or by the court, on its own motion, pursuant to applicable court rules.

7. Section 15 of P.L.1991, c.261 (C.2C:25-31) is amended to read as follows:

**C.2C:25-31 Contempt, law enforcement procedures.**

15. Where a law enforcement officer finds that there is probable cause that a defendant has committed contempt of an order entered pursuant to the provisions of P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.), the defendant shall be arrested and taken into custody by a law enforcement officer. The law enforcement officer shall follow these procedures:

The law enforcement officer shall transport the defendant to the police station or such other place as the law enforcement officer shall determine is proper. The law enforcement officer shall:

- a. Sign a complaint concerning the incident which gave rise to the contempt charge;
- b. Telephone or communicate in person or by facsimile with the appropriate judge assigned pursuant to this act and request bail be set on the contempt charge;
- c. If the defendant is unable to meet the bail set, take the necessary steps to insure that the defendant shall be incarcerated at police headquarters or at the county jail; and

d. During regular court hours, the defendant shall have bail set by a Superior Court judge that day. On weekends, holidays and other times when the court is closed, the officer shall arrange to have the clerk of the Family Part notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details. In addition, if a municipal court judge set the bail, the arresting officer shall notify the clerk of that municipal court of this information.

8. Section 17 of P.L.1991, c.261 (C.2C:25-33) is amended to read as follows:

**C.2C:25-33 Records of applications for relief; reports; confidentiality.**

17. The Administrative Office of the Courts shall, with the assistance of the Attorney General and the county prosecutors, maintain a uniform record of all applications for relief pursuant to sections 9, 10, 12, and 13 of P.L.1991, c. 261 (C.2C:25-25, C.2C:25-26, C.2C:25-28, and C.2C:25-29). The record shall include the following information:

- a. The number of criminal and civil complaints filed in all municipal courts and the Superior Court;
- b. The sex of the parties;
- c. The relationship of the parties;
- d. The relief sought or the offense charged, or both;
- e. The nature of the relief granted or penalty imposed, or both, including, but not limited to, custody and child support;
- f. The effective date of each order issued; and
- g. In the case of a civil action in which no permanent restraints are entered, or in the case of a criminal matter that does not proceed to trial, the reason or reasons for the disposition.

It shall be the duty of the Director of the Administrative Office of the Courts to compile and report annually to the Governor, the Legislature and the Advisory Council on Domestic Violence on the data tabulated from the records of these orders.

All records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.

9. This act shall take effect immediately.

Approved August 11, 1994

## CHAPTER 95

AN ACT concerning the admissibility of certain evidence in prosecutions for sex crimes and amending N.J.S.2C:14-7.

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

1. N.J.S.2C:14-7 is amended to read as follows:

**Victim's previous sexual conduct.**

2C:14-7. a. In prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of a child in violation of N.J.S.2C:24-4 or the fourth degree crime of lewdness in violation of subsection b. of N.J.S.2C:14-4, evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of the jury except as provided in this section. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and highly material and meets the requirements of subsections c. and d. of this section and that the probative value of the evidence offered substantially outweighs its collateral nature or the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

b. In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

c. Evidence of previous sexual conduct with persons other than the defendant which is offered by any lay or expert witness

shall not be considered relevant unless it is material to proving the source of semen, pregnancy or disease.

d. Evidence of the victim's previous sexual conduct with the defendant shall be considered relevant if it is probative of whether a reasonable person, knowing what the defendant knew at the time of the alleged offense, would have believed that the alleged victim freely and affirmatively permitted the sexual behavior complained of.

e. For the purposes of this section, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, sexual activities reflected in gynecological records, living arrangement and life style.

2. This act shall take effect immediately.

Approved August 11, 1994.

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## CHAPTER 96

AN ACT concerning the withdrawal of a constituent district from a limited purpose regional school district and supplementing P.L.1975, c.360 (C.18A:13-51 et seq.).

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

**C.18A:13-61.1 Withdrawal from certain limited purpose regional school district.**

1. Notwithstanding the provisions of any law, rule or regulation to the contrary, a district which receives approval to withdraw from a limited purpose regional school district that has grades 7 through 12 and is located in a county of the second class with a population of at least 500,000, but not greater than 600,000, according to the 1990 federal decennial census shall pay to the regional district an amount which represents the equity interest of the withdrawing district in the buildings, furnishings and property to which the district will take title upon withdrawal, and that amount shall be used by the regional district only for the purposes for which bonds may be issued under N.J.S.18A:24-5. The withdrawing district may issue bonds for that amount, or any portion of that amount, pursuant to chapter 24 of Title 18A of the

New Jersey Statutes; provided however, that the total principal amount of any such debt issued shall not exceed \$8,000,000.

The withdrawing district shall provide the Commissioner of the Department of Education with a detailed statement of the costs of issuance of any such bonds, within thirty days of the issuance thereof, with specific reference, where applicable, to itemized costs for the following services:

- (1) bond counsel, tax counsel and special counsel;
- (2) financial advisor;
- (3) paying agent and registrar;
- (4) rating agencies;
- (5) official statement printing;
- (6) bond printing;
- (7) trustee;
- (8) credit enhancement;
- (9) liquidity facility; and
- (10) miscellaneous issuance costs; and

a calculation of underwriters' spread, broken down into the following components, and accompanied by a list of underwriters' spreads from recent comparable bond issues:

- (1) management fees;
- (2) underwriters' fees;
- (3) selling concessions;
- (4) underwriters' counsel; and
- (5) other costs.

**C.18A:13-61.2 "Equity interest" defined; calculation.**

2. a. As used in section 1 of this act, "equity interest" means the excess in value between the assets to be acquired by the withdrawing district pursuant to section 3 of P.L.1975, c.360 (C.18A:13-53) and the proportionate contribution made by the withdrawing district to all regional assets, adjusted for replacement value.

b. The calculation required to establish the equity interest as defined in subsection a. of this section shall be the excess, if any, of the replacement cost of the buildings, grounds, furnishings, equipment, and additions thereto to which the withdrawing district shall take title upon withdrawal pursuant to section 3 of P.L.1975, c.360 (C.18A:13-53) over that amount obtained by multiplying the replacement cost of all the regional district's buildings, grounds, furnishings, equipment, and additions thereto by a ratio that reflects the proportionate contributions made by the withdrawing district to the payment of the cost of the regional district's assets. The proportionate contribu-



tion shall be determined by reference to the proportion of the revenues of the regional district contributed by the withdrawing district in each fiscal year of the life of all of the buildings, grounds, furnishings, equipment, and additions thereto of the regional district.

3. This act shall take effect immediately.

Approved August 11, 1994.

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#### CHAPTER 97

AN ACT concerning membership of the New Jersey Small Employer Health Benefits Program Board of Directors and amending P.L.1992, c.162.

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

1. Section 13 of P.L.1992, c.162 (C.17B:27A-29) is amended to read as follows:

**C.17B:27A-29 Meetings, organization of board; terms.**

13. a. Within 60 days of the effective date of this act, the commissioner shall give notice to all members of the time and place for the initial organizational meeting, which shall take place within 90 days of the effective date. The members shall elect the initial board, subject to the approval of the commissioner. The board shall consist of 10 elected public members and two ex officio members who include the Commissioner of Health and the commissioner or their designees. Initially, three of the public members of the board shall be elected for a three year term, three shall be elected for a two year term, and three shall be elected for a one year term. Thereafter, all elected board members shall serve for a term of three years. The following categories shall be represented among the elected public members:

- (1) Two carriers whose principal health insurance business is in the small employer market;
- (2) One carrier whose principal health insurance business is in the large employer market;
- (3) A health, hospital or medical service corporation;
- (4) A health maintenance organization;
- (5) A risk-assuming carrier;
- (6) A reinsuring carrier utilizing the excess coverage provided for in this act; and

(7) Three persons representing small employers, at least one of whom represents minority small employers.

No carrier shall have more than one representative on the board.

In addition to the 10 elected public members, the board shall include six public members appointed by the Governor with the advice and consent of the Senate who shall include:

Two insurance producers licensed to sell health insurance pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.);

One representative of organized labor;

One physician licensed to practice medicine and surgery in this State; and

Two persons who represent the general public and are not employees of a health benefits plan provider.

The public members shall be appointed for a term of three years, except that of the members first appointed, two shall be appointed for a term of one year, two for a term of two years and two for a term of three years.

A vacancy in the membership of the board shall be filled for an unexpired term in the manner provided for the original election or appointment, as appropriate.

b. If the initial board is not elected at the organizational meeting, the commissioner shall appoint the public members within 15 days of the organizational meeting, in accordance with the provisions of paragraphs (1) through (7) of subsection a. of this section.

c. The board shall determine the Statewide average payment per insured for each benefit plan provided for under this act. Each carrier who satisfies the efficiency and risk management standards promulgated by the board pursuant to subsection f. of section 15 of this act and whose average cost of insuring individuals covered by small employer health benefits plans exceeds the Statewide average cost of insuring such individuals by 20%, shall be reimbursed by the program for 80% of its costs in excess thereof.

d. All meetings of the board shall be subject to the requirements of the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.).

e. At least two copies of the minutes of every meeting of the board shall be delivered forthwith to the commissioner.

2. This act shall take effect immediately.

Approved August 11, 1994.

## CHAPTER 98

AN ACT concerning the establishment of county food distribution authorities and supplementing Title 40 of the Revised Statutes.

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

**C.40:37D-1 Short title.**

1. This act shall be known and may be cited as the "County Food Distribution Authorities Law."

**C.40:37-2 Findings, declarations.**

2. The Legislature finds and declares that:

a. There is a need to establish, construct and develop regional food processing and distribution centers in the various counties of the State; and

b. These regional centers will stimulate additional economic development in the State by assisting businesses and generating new jobs; and

c. These centers are expected to provide substantial benefits to the fishing industry in the State and to enhance the extensive farming industry, especially in southern and central New Jersey, by providing the means to meet the rapidly growing demands for food in these areas.

**C.40:37D-3 Definitions.**

3. As used in this act:

"Authority" means a county food distribution authority created pursuant to section 4 of this act.

"Bonds" means bonds issued by the authority pursuant to this act.

"Center" means a county food processing and distribution center authorized under section 6 of this act.

"Local Finance Board" means the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

"Notes" means notes issued by the authority pursuant to this act.

**C.40:37D-4 Creation of county food distribution authority.**

4. a. Upon approval by the Local Finance Board, pursuant to sections 4 and 5 of P.L.1983, c.313 (C.40A:5A-4; C.40A:5A-5) the governing body of a county may by ordinance or resolution, as appropriate, create a public body corporate and politic under and pursuant to this act, under the title of "the.....county food

distribution authority," with all or any significant part of the name of the county inserted. The body shall consist of the five members, who shall be residents of the county and be appointed by ordinance or resolution of the governing body as hereinafter provided, and it shall constitute the authority contemplated and provided for in this act and an agency or instrumentality of the county. Copies of the ordinance or resolution for the creation of the authority, certified by the clerk of the governing body, shall be filed in the office of the Secretary of State and in the office of the Division of Local Government Services in the Department of Community Affairs. A copy of any such certified ordinance or resolution, duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any action or proceeding and shall be conclusive evidence of due and proper adoption and filing thereof as provided in this section. After such filing in the office of the Secretary of State, a copy of the ordinance or resolution shall be published at least once in a newspaper published or circulating in the county, together with a notice stating the fact and date of its adoption and the date of the first publication of such notice. If no action questioning the validity of the creation or establishment of the authority shall be commenced within 45 days after the first publication of such notice, then the authority shall be conclusively deemed to have been validly created and established and authorized to transact business and exercise powers as a public body created pursuant to this act.

b. Upon approval by the Local Finance Board pursuant to section 20 of P.L.1983, c.313 (C.40A:5A-20), the governing body of any county which has created an authority pursuant to this act may by ordinance or resolution, as appropriate, dissolve such authority if either (1) such authority has no debts or obligations outstanding, or (2) all creditors or other obligees of the authority have consented to the ordinance or resolution. A copy of any ordinance or resolution, certified by the clerk of the governing body, shall be filed in the office of the Secretary of State and in the office of the Division of Local Government Services in the Department of Community Affairs. Upon proof of such filing and upon proof either that the authority had no debts or obligations outstanding at the time of the adoption of such ordinance or resolution or that the assumption of any such debts or obligations has been provided for in the ordinance or resolution, as appropriate, and that all creditors or other obligees of the authority have consented to such ordinance or resolution, the authority shall be

conclusively deemed to have been lawfully and properly dissolved. Thereupon, all right, title and interest in and to the property of the authority shall be vested in the county, except that any particular property shall vest in any other governmental unit or person if the terms of any lease or other agreement of the authority with respect thereto shall so provide. A copy of any such certified ordinance or resolution, duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any action or proceeding and shall be conclusive evidence of due and proper adoption and filing thereof as aforesaid.

c. The members first appointed shall, by the resolution of appointment, be designated to serve for terms respectively expiring on the first days of the first, second, third, fourth and fifth Februaries next ensuing after the date of their appointment. On or after January 1 in each year after such first appointments, one person shall be appointed as a member of the authority for a term commencing on or after February 1 in such year and expiring on February 1 in the fourth year after such year. Each member shall hold office for the term of appointment and until his successor shall have been appointed and qualified. Any vacancy in the membership of the authority during an unexpired term shall be filled by appointment of a person as member for the unexpired term. A copy of any resolution appointing any such members, certified by the clerk of the governing body, may be filed in the office of the Secretary of State and in the office of the Division of Local Government Services in the Department of Community Affairs. A copy of any such certified resolution, duly certified by or on behalf of the Secretary of State, shall be admissible in evidence in any action or proceeding and shall be conclusive evidence of due and proper adoption and filing thereof as aforesaid and, except in an action or proceeding seeking only exclusion of the appointee from office, shall be conclusive evidence of the due and proper appointment of the members named therein.

d. Every authority, upon the first appointment of its members and thereafter on or after February 1 in each year, shall annually elect from among its members a chairman and a vice chairman who shall hold office until February 1 next ensuing and until their respective successors shall have been appointed and qualified.

e. The powers of an authority shall be vested in the members thereof in office from time to time, and a majority of the entire authorized voting membership of the authority shall constitute a quorum at any meeting thereof. Action may be taken and motions

and resolutions adopted by the authority at any meeting of the members thereof by the affirmative vote of a majority of the voting members present, unless in any case the bylaws of the authority shall require a larger number.

f. The members of an authority shall serve without compensation, but the authority may reimburse its members for necessary expenses incurred in the discharge of their duties.

g. No member of the governing body of the county shall be appointed as a member of, or employed by, an authority; but the governing body of the county may, by ordinance or resolution, as appropriate, provide that, in addition to the members appointed pursuant to subsection a. of this section, the county executive in the case of a county having adopted article 3 of the "Optional County Charter Law," P.L.1972, c.154 (C.40:41A-31 et seq.), the county manager in the case of a county having adopted article 4 of that act (C.40:41A-45 et seq.), the county supervisor in the case of a county having adopted article 5 of that act (C.40:41A-59 et seq.), or the president of the board of chosen freeholders in the case of any other county, shall be appointed to serve ex officio, as a non-voting member of an authority.

h. A member of an authority may be removed by the governing body of the county for incapacity, inefficiency or neglect of duty or misconduct in office or other disqualifying cause and after he shall have been given a copy of the charges against him and, not sooner than 10 days thereafter, been afforded opportunity for a hearing, in person or by counsel, by such governing body with respect to such charges.

**C.40:37D-5 Powers of authority, general.**

5. Except as otherwise limited by this act and the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), the authority shall have power:

- a. To sue and be sued;
- b. To have an official seal and alter it at pleasure;
- c. To make and alter bylaws for its organization and internal management and for the conduct of its affairs and business;
- d. To maintain an office at a place within the county as it may determine;
- e. To acquire, hold, use and dispose of its income, revenues, funds and moneys;
- f. To acquire, lease as lessee or lessor, rent, lease, hold, use and dispose of real or personal property for its purposes;

g. To borrow money and to issue its negotiable bonds or notes and to secure them by a mortgage on its property or any part thereof and otherwise to provide for and secure the payment of them and to provide for the rights of the holders of the bonds or notes;

h. Pursuant to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to make and enter into all contracts, leases, and agreements for the use or occupancy of the center or any part of it or which are necessary or incidental to the performance of its duties and the exercise of its powers under this act;

i. To make surveys, maps, plans for, and estimates of the cost of, the center;

j. To establish, acquire, construct, or lease the right to construct, rehabilitate, repair, improve, own, operate, and maintain the center, and let, award and enter into construction contracts, purchase orders and other contracts with respect to the center as the authority shall determine;

k. To fix and revise from time to time and charge and collect rents, tolls, fees and charges for the use, occupancy or services of the center or any part thereof or for admission thereto, and for the grant of concessions therein and for things furnished or services rendered by the authority;

l. To establish and enforce rules and regulations for the use or operation of the center or the conduct of its activities, and provide for the policing and the security of the center;

m. To acquire in the name of the authority by purchase or otherwise, on terms and conditions and in a manner it deems proper, or, except with respect to the State and, as further provided in this subsection, by the exercise of the power of eminent domain, any land and other property, including land under water, and riparian rights, which it may determine is reasonably necessary for the center or for the relocation or reconstruction of any highway by the authority and any rights, title and interest in the land and other property, including public lands, reservations, highways or parkways, owned by or in which the State or any county or municipality, public corporation, or other political subdivision of the State has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or any lesser interest in private property, and any fee simple or absolute interest in, easements upon or the benefit of restrictions upon abutting property to preserve and protect the center. Whenever the authority has determined that it is necessary to take any real property for the purposes

of the center by the exercise of the power of condemnation, as hereinafter provided, it shall prepare two copies of diagrams, maps or plans designating the general area in which the real property is to be acquired and file one copy thereof in its office and the other copy thereof in the office of the clerk of the municipality in which the real property is located. The authority is empowered to acquire and take real property by condemnation, in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) and to that end, may invoke and exercise the power to condemn in the manner or mode of procedure prescribed in that act, except where the provisions of section 8 of this act provide otherwise; and except that, notwithstanding the foregoing or any other provision of this act, the authority shall not institute any proceeding to acquire or take, by condemnation, any real property within the designated area in the municipality referred to above in this section until after the date of filing in the office of the clerk of the municipality of a certified copy of: (1) a resolution of the authority stating the finding of the authority that it is necessary or convenient to acquire real property in the designated area for facility purposes, and (2) a resolution of the governing body of the municipality expressing its consent to the acquisition of real property in the designated area;

n. To provide through its employees, or by the grant of one or more concessions, or in part through its employees and in part by grant of one or more concessions, for the furnishing of services and things for the accommodation of persons admitted to or using the center or any part of it;

o. To acquire, construct, operate, maintain, improve and make capital contributions to others for transportation and other facilities, services and accommodations for the public using the center and to lease or otherwise contract for its operation;

p. Subject to any agreement with bondholders or noteholders, to invest moneys of the authority not required for immediate use, including proceeds from the sale of any bonds or notes, in the manner set forth in N.J.S.40A:5-15;

q. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of this act, with the terms and conditions thereof;

r. Subject to any agreements with bondholders or noteholders, to purchase bonds or notes of the authority out of any funds or



money of the authority available for those purposes, and to hold, cancel or resell the bonds or notes;

s. To appoint and employ an executive director and additional officers, who need not be members of the authority, and accountants, attorneys, financial advisors or experts and any other officers, agents and employees as it may require and determine their qualifications, terms of office, duties and compensation, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by this act under, through, or by means of its officers, agents or employees or by contracts with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To conduct a study to determine if the center is feasible and thereafter to conduct feasibility studies to identify an appropriate site therefor and thereafter to determine the location, type and character of the center or any part of it and all other matters in connection with all or any part of the center, which shall comply with the provisions of any applicable land use plan, zoning regulation, building code or similar regulation heretofore or hereafter adopted by the State, any municipality, county, public body politic and corporate, or any other political subdivision of the State;

w. To make all purchases, contracts, or agreements pursuant to the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.); and

x. To do anything necessary or convenient to carry out its purposes and exercise the powers granted in this act.

**C.40:37D-6 County food processing and distribution center.**

6. a. An authority created pursuant to section 4 of this act is authorized to acquire by purchase, establish, develop, construct, operate, maintain, repair, reconstruct, restore, improve and otherwise effectuate a food processing and distribution center. The center shall be known as the ".....county food processing and distribution center," with all or any significant part of the name of the county inserted, and shall be located in that county of this State. The center shall consist, as the authority may determine, of one or more buildings, structures, facilities, properties and appurtenances incidental and necessary to a center suitable for the processing and distribution of food on a local or regional basis and may include a wholesale produce market and storage, distri-

bution and processing facilities for meat, fish, dairy and other grocery products, beverages and frozen foods, driveways, roads, approaches, parking areas, restaurants, transportation structures, systems and facilities, and equipment, furnishings, and all other structures and appurtenant facilities related to, necessary for, or complementary to the purposes of the center or any facility thereof. The authority may construct on the site other facilities consistent with the purposes for which the authority was established. As part of the center the authority is authorized to make capital contributions to others for transportation and other facilities, and accommodations for the public using the center. Any part of the site not occupied or to be occupied by facilities of the center may be leased by the authority for purposes determined by the authority to be consistent with or related to the purposes of the center. In addition, the authority may contract with any person for the development of any of the facilities to be a part of the center and may provide for the financing of the acquisition of any real property or of any construction.

b. Revenues, moneys or other funds, if any, derived from the operation or ownership of the center, shall be applied in accordance with the resolution or resolutions authorizing or relating to the issuance of bonds or notes of the authority to the following purposes and in the following order:

(1) Principal, sinking fund installments and redemption of and interest on any bonds or notes of the authority issued for the purposes of the center or for the purpose of refunding the same, including reserves therefor;

(2) The costs of operation and maintenance of the center and reserves therefor;

(3) The costs of any major or extraordinary repairs, renewals or replacements with respect to the center or incidental improvements to it not paid pursuant to paragraph (1) above, including reserves therefor;

(4) Payments required to be made pursuant subsection b. of section 16 of this act;

(5) Payments authorized to be made pursuant to subsection c. of section 16 of this act;

(6) The balance remaining after application in accordance with the above shall be deposited according to the terms of the bond resolution.

**C.40:37D-7 Powers of authority relative to highways and lands.**

7. a. If the authority shall find it necessary in connection with the undertaking of the center to change the location of any por-

tion of any public highway or road, it may contract with any government agency, or public or private corporation which may have jurisdiction over the public highway or road to cause the public highway or road to be constructed at a location the authority deems most favorable. The cost of the reconstruction and any damage incurred in changing the location of the highway shall be ascertained and paid by the authority as a part of the cost of the center. Any public highway affected by the construction of the center may be vacated or relocated by the authority in the manner now provided by law for the location or relocation of public roads, and any damages awarded as a result shall be paid by the authority as part of the cost of the center. In all undertakings authorized by this subsection the authority shall consult and obtain the approval of the Department of Transportation.

b. In addition to the foregoing powers, the authority and its authorized agents and employees may enter upon any lands, waters and premises for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of this act, all in accordance with due process of law, and the entry shall not be deemed a trespass nor shall an entry for that purpose be deemed an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for any actual damages resulting to the lands, waters and premises as a result of its activities.

c. The authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances, herein called "public utility facilities," of any public utility as defined in R.S.48:2-13, in, on, along, over or under the center. Whenever the authority shall determine that it is necessary that public utility facilities which now are, or hereafter may be, located in, on, along, over or under the center shall be relocated in the center, or should be removed therefrom, the public utility owning or operating the facilities shall relocate or remove the same in accordance with the order of the authority. The cost and expenses of the relocation or removal, including the cost of installing the facilities in a new location, or new locations, and the cost of any lands, or any rights or interests in lands and any other rights, acquired to accomplish the relocation or removal, shall be ascertained and paid by the authority as a part of the cost of the center. In case of any relocation or removal of facilities, as

aforesaid, the public utility owning or operating the same, its successors or assigns may maintain and operate the facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate the facilities in their former location or locations. In all undertakings authorized by this subsection the authority shall consult and obtain the approval of the Board of Public Utilities.

**C.40:37D-8 Exercise of power of eminent domain.**

8. a. Upon the exercise of the power of eminent domain, the compensation to be paid thereunder shall be ascertained and paid in the manner provided in the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), insofar as the provisions thereof are applicable and not inconsistent with the provisions contained in this act. The authority may join in separate subdivisions in one petition or complaint the descriptions of any number of tracts or parcels of land or property to be condemned, if each tract or parcel lies wholly in or has a substantial part of its value lying wholly within the same county, and the names of any number of owners and other parties who may have an interest therein and all the land or property included in the petition or complaint may be condemned in a single proceeding; but separate awards shall be made for each tract or parcel of land or property.

b. Upon the filing of the petition or complaint or at any time thereafter the authority may file with the clerk of the county in which the property is located and also with the clerk of the Superior Court a declaration of taking, signed by the authority, declaring that possession of one or more of the tracts or parcels of land or property described in the petition or complaint is being taken by and for the use of the authority. The declaration of taking shall be sufficient if it sets forth: (1) a description of each tract or parcel of land or property to be taken sufficient for the identification of it, to which there shall be attached a plan or map thereof; (2) a statement of the estate or interest in the land or property being taken; (3) a statement of the sum of money estimated by the authority by resolution to be just compensation for the taking of the estate or interest in each tract or parcel of land or property described in the declaration; and (4) that, in compliance with the provisions of this act, the authority has established and is maintaining a trust fund as hereinafter provided.

c. Upon the filing of the declaration, the authority shall deposit with the clerk of the Superior Court the amount of the estimated compensation stated in the declaration. In addition to the deposits with the clerk of the Superior Court the authority shall maintain a special trust fund on deposit with a bank or trust company doing business in the State in an amount at least equal to twice the aggregate amount deposited with the clerk of the Superior Court, as estimated compensation for all property described in declarations of taking with respect to which the compensation has not been finally determined and paid to the persons entitled thereto or into court. The trust fund shall consist of cash or securities readily convertible into cash constituting legal investment for trust funds under the laws of the State. The trust fund shall be held solely to secure and may be applied to the payment of just compensation for the land or other property described in the declarations of taking. The authority shall be entitled to withdraw from the trust fund from time to time so much as may then be in excess of twice the aggregate of the amount deposited with the clerk of the Superior Court as estimated compensation for all property described in declarations of taking with respect to which the compensation has not been finally determined and paid to the persons entitled thereto or into court.

d. Upon the filing of the declaration of taking pursuant to subsection b. of this section and depositing with the clerk of the Superior Court the amount of the estimated compensation stated in the declaration, the authority, without other process or proceedings, shall be entitled to the exclusive possession and use of each tract of land or property described in the declaration and may forthwith enter into and take possession of the land or property, it being the intent of this provision that the proceedings for compensation or any other proceedings relating to the taking of the land or interest therein or other property shall not delay the taking of possession thereof and the use thereof by the authority for the purposes for which the authority is authorized by law to acquire or condemn the land or other property or interest in it.

e. The authority shall cause notice of the filing of the declaration and the making of the deposit to be served upon each party in interest named in the petition residing in the State, either personally or by leaving a copy at his residence, if known, and upon each party in interest residing out of the State, by mailing a copy to him at his residence, if known. If the residence of the party or the name of the party is unknown, notice shall be published at least once in a newspaper published or circulating in the counties

in which the land is located. Service, mailing or publication shall be made within 10 days after filing the declaration. Upon the application of any party in interest and after notice to other parties in interest, including the authority, any judge of the Superior Court assigned to sit for that county may order that the money deposited with the clerk of the Superior Court or any part thereof be paid forthwith to the persons entitled thereto for or on account of the just compensation to be awarded in the proceeding, provided each person files with the clerk of the Superior Court a consent in writing that, if the award in the condemnation proceeding shall be less than the amount deposited, the court, after notice as provided in this subsection and hearing, may determine his liability, if any, for the return of the difference or any part of it and enter judgment therefor. If the amount of the award as finally determined shall exceed the amount so deposited, the person to whom the award is payable shall be entitled to recover from the authority the difference between the amount of the deposit and the amount of the award, with interest at the then legal rate from the date of making the deposit. If the amount of the award shall be less than the amount so deposited, the clerk of the Superior Court shall return the difference between the amount of the award and the deposit to the authority, unless the amount of the deposit or any part of it shall have theretofore been distributed, in which event the court, on petition of the authority and notice to all persons interested in the award and affording them an opportunity to be heard, shall enter judgment in favor of the authority for the difference against the parties liable for the return. The authority shall cause notice of the date fixed for the hearing to be served upon each party residing in the State, either personally or by leaving a copy at his residence, if known, and upon each party residing out of the State, by mailing a copy to him at his residence, if known. If the residence of any party or the name of the party is unknown, notice shall be published at least once in a newspaper published or circulating in the counties in which the land is located. Service, mailing or publication shall be made at least 10 days before the date fixed for the hearing.

Whenever under the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.) the amount of the award may be paid into court, payment may be made into the Superior Court and may be distributed according to law. The authority shall not abandon any condemnation proceeding subsequent to the date upon which it has taken possession of the land or property as herein provided.

**C.40:37D-9 Issuance of bonds, notes.**

9. a. The authority is authorized from time to time to issue its bonds or notes in principal amounts which in the opinion of the authority 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 or notes issued by it, whether the bonds or notes or interest to be funded or refunded have or have not become due, the establishment or increase of the reserves to secure or to pay the bonds or notes or interest and all other costs or expenses of the authority incident to and necessary to carry out its corporate purposes and powers.

b. Except as may be otherwise expressly provided in this act or by the authority, every issue of bonds or notes shall be general obligations payable out of any revenues or funds of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or funds. The authority may issue types of bonds or notes as it may determine, including, but not limited to, bonds or notes as to which the principal and interest are payable (1) exclusively from the revenues and receipts of the part of the center financed with the proceeds of the bonds or notes; (2) exclusively from the revenues and receipts of certain designated parts of the center, whether or not the same are financed in whole or in part from the proceeds of the bonds or notes; or (3) from its revenues and receipts generally. The bonds or notes may be additionally secured by a pledge of any grant, subsidy or contribution from the United States of America or any agency or instrumentality thereof or the State or any agency, instrumentality or political subdivision thereof, or any person, or a pledge of any income or revenues, funds or moneys of the authority from any source whatsoever.

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

d. Bonds or notes of the authority shall be authorized by a resolution of the authority and may be issued in one or more series and shall bear the date, mature at the time, bear interest at a rate of interest per annum, be in denominations, be in a form, either coupon or registered, carry any conversion or registration privileges, have rank or priority, be executed in any manner, be payable from any sources in any medium of monetary payment at a place within

or without the State, and be subject to the terms of redemption, with or without premium, as the resolution may provide.

e. Bonds or notes of the authority may be sold at public or private sale at a price and in a manner that the authority determines. Every bond shall mature and be paid not later than 40 years from the date of issue.

f. Bonds or notes may be issued under the provisions of this act without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or other things than those proceedings, conditions or things which are specifically required by this act.

g. Bonds and notes of the authority issued under the provisions of this act shall not be a debt or liability of the State or its political subdivisions other than the authority and shall not create or constitute any indebtedness, liability or obligation of the State or of a political subdivision or be or constitute a pledge of the faith and credit of the State or of a political subdivision but the bonds and notes, unless funded or refunded by bonds or notes of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in this act. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay its principal or interest only from revenues or funds of the authority and that neither the State nor its political subdivisions are obligated to pay the principal or interest and that neither the faith and credit nor the taxing power of the State or its political subdivisions is pledged to the payment of the principal of or the interest on the bonds or notes.

h. All expenses incurred in carrying out the provisions of this act shall be payable solely from revenues or funds provided or to be provided under the provisions of this act and nothing in this act shall be construed to authorize the authority to incur any indebtedness or liability on behalf of or payable by the State or its political subdivisions.

**C.40:37D-10 Additional powers of authority relative to bond covenants.**

10. In any resolution of the authority authorizing or relating to the issuance of any bonds or notes, the authority, in order to secure the payment of the bonds or notes and in addition to its other powers, shall have power by the resolutions which shall constitute covenants by the authority and contracts with the holders of the bonds or notes to:



- a. Pledge all or any part of its rents, fees, tolls, revenues or receipts to which its right then exists or may thereafter come into existence, and the moneys derived therefrom, and the proceeds of any bonds or notes;
- b. Pledge any lease or other agreement or the rents or revenues and their proceeds;
- c. Mortgage all or any part of its property, real or personal, then owned or later acquired;
- d. Covenant against pledging all or any part of its rents, fees, tolls, revenues or receipts or its leases or agreements or rents or other revenues from them or the proceeds of them, or against mortgaging all or any part of its real or personal property then owned or later acquired, or against permitting or suffering any lien on any of the foregoing;
- e. Covenant with respect to limitations on any right to sell, lease or otherwise dispose of any project or its parts or any property of any kind;
- f. Covenant as to any bonds and notes to be issued and their limitations, terms and conditions, and as to the custody, application, investment, and disposition of their proceeds;
- g. Covenant as to the issuance of additional bonds or notes or as to limitations on the issuance of additional bonds or notes and on the incurring of other debts by it;
- h. Covenant as to the payment of the principal of or interest on the bonds or notes, or any other obligations, as to the sources and methods of the payment, as to the rank or priority of the bonds, notes or obligations with respect to any lien or security or as to acceleration of the maturity of the bonds, notes or obligations;
- i. Provide for the replacement of lost, stolen, destroyed or mutilated bonds or notes;
- j. Covenant against extending the time for the payment of bonds or notes or interest on them;
- k. Covenant as to the redemption of bonds or notes and privileges of their exchange for other bonds or notes of the authority;
- l. Covenant as to the rates of toll and other charges to be established and charged, the amount to be raised each year or other period of time by tolls or other revenues and as to the use and disposition to be made of them;
- m. Covenant to create or authorize the creation of special funds or moneys to be held in pledge or otherwise for construction, operating expenses, payment or redemption of bonds or notes,

reserves or other purposes and as to the use, investment, and disposition of the moneys held in the funds;

n. Establish the procedure, if any, by which the terms of any contract or covenant with or for the benefit of the holders of bonds or notes may be amended or abrogated, the amount of bonds or notes the holders of which shall consent thereto, and the manner in which the consent may be given;

o. Covenant as to the construction, improvement, operation or maintenance of its real and personal property, its replacement, the insurance to be carried on it, and the use and disposition of insurance moneys;

p. Provide for the release of property, leases or other agreements, or revenues and receipts from any pledge or mortgage and reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage;

q. Provide for the rights and liabilities, powers and duties arising upon the breach of any covenant, condition or obligation and prescribe the events of default and the terms and conditions upon which the bonds, notes or other obligations of the authority shall become or may be declared due and payable before maturity and the terms and conditions upon which any declaration and its consequences may be waived;

r. Vest in trustees within or without the State property, rights, powers and duties in trust as the authority may determine, including the right to foreclose any mortgage, and limit the rights, duties and powers of a trustee;

s. Execute mortgages, bills of sale, conveyances, deeds of trust and other instruments necessary or convenient in the exercise of its powers or in the performance of its covenants or duties;

t. Pay the costs or expenses incident to the enforcement of the bonds or notes or of the provisions of the resolution or of any covenant or agreement of the authority with the holders of its bonds or notes;

u. Limit the powers of the authority to construct, acquire or operate any structures, facilities or properties which may compete or tend to compete with the center;

v. Limit the rights of the holders of any bonds or notes to enforce any pledge or covenant securing bonds or notes; and

w. Make covenants other than in addition to the covenants herein expressly authorized, of like or different character, and to make covenants to do or refrain from doing acts and things as may be necessary, or convenient and desirable, in order to better secure bonds or notes or which, in the discretion of the authority, will tend

to make bonds or notes more marketable, notwithstanding that the covenants, acts or things may not be enumerated herein.

**C.40:37D-11 Pledges by authority immediately valid, binding.**

11. Any pledge of revenues, moneys, funds or other property made by the authority shall be valid and binding from the time when the pledge is made. The revenues, moneys, funds or other property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge of revenues, moneys or funds is created need be filed or recorded except in the records of the authority.

**C.40:37D-12 Establishment of additional reserves, funds, accounts.**

12. a. The authority may establish reserves, funds or accounts, in addition to those required pursuant to subsection b. of section 6 of this act, as it determines necessary or desirable to further the accomplishment of the purposes of the authority, to manage any funds that may be received other than those specified in subsection b. of section 6 of this act, or to comply with the provisions of any agreement made by or any resolution of the authority.

b. Nothing herein contained shall be deemed to cause the bonds or notes of the authority to be a debt or a liability of the State or its political subdivisions other than the authority, and the bonds and notes of the authority shall not create or constitute any indebtedness, liability or obligation of this State or any political subdivision or be or constitute a pledge of the faith and credit of the State or its political subdivisions.

**C.40:37D-13 Pledge of State.**

13. a. The State pledges to and covenants and agrees with the holders of any bonds or notes issued pursuant to this act that the State will not limit or alter the rights or powers vested in the authority to acquire, construct, maintain, improve, repair and operate the center in any way that would jeopardize the interest of those holders, or 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 rents, fees, rates or other charges as may be convenient or necessary to produce sufficient revenues to meet all expenses of the authority and 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, together with interest thereon, are fully met and discharged or provided for.

b. The State shall have the right, upon furnishing the authority with sufficient funds, to require the authority to redeem, pay or cause to be paid, at or prior to maturity, in whole or in part, any bonds issued by the authority under this act, provided the redemption or payment is made in accordance with the provision of any contract entered into by the authority with the holders of the bonds.

**C.40:37D-14 Investment of funds, moneys in authority bonds.**

14. The State and all public officers, governmental units and agencies thereof, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries may legally invest any sinking funds, moneys or other funds belonging to them or within their control in any bonds or notes issued pursuant to this act, and the bonds or notes shall be authorized security for any public deposits.

**C.40:37D-15 Conveyance of governmental real property to authority.**

15. All counties and municipalities and other governmental subdivisions, authorities, and public departments, agencies and commissions of the State, notwithstanding any contrary provision of law, are authorized to lease, lend, grant or convey to the authority at its request upon terms and conditions as the governing body or other proper authorities of the counties, municipalities and governmental subdivisions, authorities and departments, agencies or commissions of the State deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the authorizing ordinance of the governing body of the municipality, the authorizing resolution of the governing body of the county, or the regular and formal action of any public body concerned, any real property or interest therein which may be necessary or convenient to the effectuation of the purposes of the authority, including public highways and real property already devoted to public use, provided that the real property is located within the site authorized for the center.

**C.40:37D-16 Tax treatment of authority facilities, property, bonds.**

16. a. All facilities and other property of the authority are declared to be public property devoted to an essential public and governmental function and purpose and shall be exempt from all taxes and special assessments of the State or any political subdivision thereof, but when any part of the center not occupied or to be occupied by facilities of the center is leased by the authority to another whose property is not exempt and the leasing of which does not make the real estate taxable, the estate created by the lease and its appurtenances shall be listed as the property of the lessee or his assignee, and be assessed and taxed as real estate. All bonds or notes issued pursuant to this act are declared to be issued by a body corporate and politic of the State and for an essential public and governmental purpose and the bonds and notes, and the interest thereon and the income therefrom, and all funds, revenues, income and other moneys received or to be received by the authority and pledged or available to pay or secure the payment of the bonds or notes, or interest thereon, shall be exempt from taxation except for transfer inheritance and estate taxes.

b. To the end that there does not occur an undue loss of future tax revenues by reason of the acquisition of real property by the authority or construction of additional facilities by the authority for the center, the authority annually shall make payments in lieu of taxes to the taxing jurisdiction in which the property is located in an amount computed in each year with respect to each taxing jurisdiction in an amount equal to the taxes which would have been assessed against the property acquired by the authority if the property were not exempt. The payments shall be made in each year commencing with the first year subsequent to the year in which the real property shall have been converted from a taxable to an exempt status by reason of its acquisition by the authority.

c. The authority is further authorized to enter into any agreement with any county or municipality in the State, whereby the authority will undertake to pay any additional amounts to compensate for any loss of tax revenues by reason of the acquisition of any real property by the authority for the center or to pay amounts to be used by the county or municipality in furtherance of the development of the center. Every county and municipality so located is authorized to enter into these agreements with the authority and to accept payments which the authority makes thereunder.

**C.40:37D-17 Annual report to Local Finance Board.**

17. The authority shall make an annual report of its activities for its preceding fiscal year to the Local Finance Board, pursuant to the provisions of the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.).

18. This act shall take effect immediately.

Approved August 11, 1994.

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**CHAPTER 99**

**AN ACT concerning landfill mining, amending and supplementing P.L.1975, c.326 and amending P.L.1981, c.306.**

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

**C.13:1E-34.1 Development of landfill mining demonstration project.**

1. a. The department shall authorize the development of a landfill mining demonstration project to provide information and experience concerning landfill mining. As used in this act, "landfill mining" means the excavation and removal of materials from a closed sanitary landfill facility for the purposes of recycling, use, reuse, sale, or composting.

b. Any local government unit that owns or operates a sanitary landfill facility proposing to undertake a landfill mining demonstration project shall submit to the department an application package that shall contain a mining plan and any other information as may be prescribed by the department.

c. The department shall allocate \$250,000 from the Sanitary Landfill Contingency Fund, established pursuant to section 6 of P.L.1981, c.306 (C.13:1E-105), to the Solid Waste Management Research and Development Fund, established pursuant to section 25 of P.L.1975, c.326 (C.13:1E-34), for grants to local government units that own or operate sanitary landfill facilities to undertake landfill mining demonstration projects.

d. An owner or operator of a sanitary landfill facility who undertakes a landfill mining demonstration project shall prepare a written report concerning the project every six months during the implementation of the project and a final report within six months of its

completion, which shall be submitted to the department, to the Legislature, and to the Chairmen of the Senate Environment Committee, the Assembly Solid and Hazardous Waste Committee and the Assembly Environment and Energy Committee or their successor committees. The final report shall include but shall not be limited to an explanation of the procedures used in the project, the number of tons of recyclable materials recovered, the types of materials recovered, the number of tons of materials sold, the buyers of any materials recovered, the materials composted, the number of tons of materials composted, additional disposal capacity created, cost effectiveness, the environmental problems revealed, the measures taken for closure, the materials remaining in the landfill, if any, the equipment purchased, an accounting of the costs of the projects, and any other information the department deems appropriate.

e. The department may charge reasonable fees, not to exceed 10% of the amount of the grant, for any of the services to be performed or rendered in connection with this section, and for the costs of compliance monitoring and administration. The fee schedule shall reasonably reflect the duration or complexity of the specific service performed or rendered, information reviewed, or inspection conducted.

f. As used in this section, "local government unit" means any county or municipality, or any agency, instrumentality, authority or corporation of any county or municipality, including, but not limited to, sewerage, utility and improvement authorities, or any public body having local or regional jurisdiction over solid waste disposal, including, but not limited to, solid waste management districts, or any political subdivision of the State, authority or agency authorized pursuant to law to own or operate sanitary landfill facilities or to provide for the environmentally sound disposal of solid waste.

2. Section 9 of P.L.1981, c.306 (C.13:1E-108) is amended to read as follows:

**C.13:1E-108 Disbursement of fund.**

9. Moneys in the fund shall be disbursed by the department for the following purposes and no others:

a. Administrative costs incurred by the department pursuant to section 6 of P.L.1981, c.306 (C.13:1E-105);

b. Damages as provided in section 7 of P.L.1981, c.306 (C.13:1E-106);

c. Grants for landfill mining demonstration projects as provided in section 1 of P.L.1994, c.99 (C.13:1E-34.1); and

d. Administrative costs incurred by the Attorney General, the department or any other State agency to implement the provisions of P.L.1983, c.392 (C.13:1E-126 et seq.), as amended and supplemented by P.L.1991, c.269 (C.13:1E-128.1 et al.), on a timely basis, except that the amounts used for this purpose shall not exceed \$5,000,000.00. Any moneys disbursed by the department from the fund for this purpose shall be repaid to the fund in equal amounts from the fees collected by the department pursuant to section 3 of P.L.1971, c.461 (C.13:1E-18), in annual installments beginning July 1, 1990 and annually thereafter until the full amount is repaid according to a schedule of repayments determined by the State Treasurer. For the purposes of this subsection, "State agency" means any State department, division, agency, commission or authority.

3. Section 21 of P.L.1975, c.326 (C.13:1E-30) is amended to read as follows:

**C.13:1E-30 State grant for experimental, landfill mining projects; application; evaluation.**

21. a. The commissioner may make, or contract to make, a State grant to any person engaged in solid waste collection, disposal or utilization activities, to assist that person in experimenting with new methods of solid waste collection, disposal or utilization, including but not limited to, source reduction, material recycling and energy recovery demonstration projects, intermunicipal waste collection and disposal systems projects, and coordinated multiusage of terminated sanitary landfill disposal sites projects. The commissioner may also make, or contract to make, a State grant to a local government unit, as defined pursuant to subsection f. of section 1 of P.L.1994, c.99 (C.13:1E-34.1) that owns or operates a sanitary landfill facility to undertake a landfill mining project, as defined pursuant to subsection a. of section 1 of P.L.1994, c.99 (C.13:1E-34.1).

Any person engaged in solid waste collection, disposal or utilization activities, or a local government unit as provided by section 1 of P.L.1994, c.99 (C.13:1E-34.1) may apply to the commissioner for a State grant; provided, however, that the application has been approved by the board of chosen freeholders, or the Hackensack Commission, as the case may be, as in conformity with the adopted and approved solid waste management plan of the solid waste management district within which the experimental project is to be undertaken. The applicant shall submit a



copy of the plan for any solid waste collection, disposal or utilization experimental project for which a State grant is sought and such other detailed information concerning the project, including maps, data, plans, estimated costs, and method of financing, as the commissioner may require by rules and regulations promulgated hereunder. The commissioner may exempt any demonstration project from the provisions of P.L.1970, c.39 (C.13:1E-1 et seq.) or P.L.1970, c.40 (C.48:13A-1 et seq.).

b. The commissioner shall review and evaluate all applications submitted to him pursuant to subsection a. of this section, and shall establish such priorities for making grants pursuant to this amendatory and supplementary act as shall give due regard to the degree to which the experimental project for which a State grant is sought will have a beneficial and long term effect on solid waste collection, disposal and utilization methods in this State.

4. Section 25 of P.L.1975, c.326 (C.13:1E-34) is amended to read:

**C.13:1E-34 Solid Waste Management Research and Development Fund; creation.**

25. a. There is hereby created in the Department of Environmental Protection a special fund which shall be known as the Solid Waste Management Research and Development Fund. There shall be included in the fund all moneys appropriated by the Legislature for inclusion therein. The commissioner may invest and reinvest any moneys in the fund, or any portion thereof, in legal obligations, of this State or any political subdivision thereof or the United States. Any income or interest on, or increment to, moneys so invested or reinvested shall be included in the fund.

b. Upon the approval by the commissioner of any application for a State grant pursuant to this amendatory and supplementary act, the commissioner shall pay over the moneys in the fund, or any portion thereof, to the contracting person in accordance with commitments made and contracts entered into pursuant to this amendatory and supplementary act.

c. Nothing herein shall be construed as requiring the commissioner to approve any application for any State grant or to expend the moneys in the aforesaid Solid Waste Management Research and Development Fund solely for the purposes of making such State grants, and the commissioner is hereby authorized and empowered, in his discretion, to allocate the moneys in the fund, or any portion thereof, for any experimentation with, or demonstration of, new

methods and techniques for the collection, disposal and utilization of solid waste, including the acquisition of real property and the purchase of any facility, site, laboratory, equipment or machinery as authorized pursuant to section 6 of P.L.1970, c.39 (C.13:1E-6).

**C.13:1E-34.2 Provisions of "Pinelands Protection Act" not modified.**

5. Nothing in sections 1 through 4 of P.L.1994, c.99 (C.13:1E-34.1 et al.), shall be construed to modify the provisions of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) or any rule or regulation promulgated pursuant to that act and section 502 of the "National Parks and Recreation Act of 1978" (Pub.L.95-625).

6. This act shall take effect immediately.

Approved August 11, 1994.

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## CHAPTER 100

AN ACT concerning local budget caps and supplementing P.L.1976, c.68 (C.40A:4-45.1 et seq.).

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

**C.40A:4-45.15a Municipality permitted certain final appropriations.**

1. a. Notwithstanding any provisions of P.L.1976, c.68 (C.40A:4-45.1 et seq.) to the contrary, a municipality, which, for any local budget year beginning on or after January 1, 1994 for which the index rate is greater than 5%, increases its final appropriations in an amount less than that permitted under the 5% percentage rate, shall be permitted to appropriate the difference between the amount of its actual final appropriations and the amount of its permitted final appropriations under the 5% percentage rate, as an exception to its final appropriations in either of the next two succeeding years. In the year immediately following the year in which the amount of difference is so appropriated, the amount of difference shall be added to the final appropriations of the preceding year for the purposes of section 2 of P.L.1976, c.68 (C.40A:4-45.2).

b. Notwithstanding any provisions of P.L.1976, c.68 (C.40A:4-45.1 et seq.) to the contrary, a municipality, which, for any local budget year beginning on or after January 1, 1994 for

which the index rate is less than 5%, increases its final appropriations in an amount less than 5%, shall be permitted to appropriate the difference between the amount of its actual final appropriations under the 5% percentage rate, as an exception to its final appropriations in either of the next two succeeding years. In the year immediately following the year in which the amount of difference is so appropriated, the amount of difference shall be added to the final appropriations of the preceding year for the purposes of section 2 of P.L.1976, c.68 (C.40A:4-45.2).

**C.40A:4-45.15b County permitted certain final appropriations, county tax levy.**

2. a. Notwithstanding any provisions of P.L.1976, c.68 (C.40A:4-45.1 et seq.) to the contrary, a county, which, for any local budget year beginning on or after January 1, 1993 for which the index rate is greater than 5%, increases its final appropriations or county tax levy in an amount less than that permitted under the 5% percentage rate, shall be permitted to appropriate the difference between the amount of its actual final appropriations or county tax levy and the amount of its permitted final appropriations or county tax levy under the 5% percentage rate, as an exception to its final appropriations or county tax levy in either of the next two succeeding years. In the year immediately following the year in which the amount of difference is so appropriated, the amount of difference shall be added to the final appropriations or county tax levy of the preceding year for the purposes of section 2 of P.L.1976, c.68 (C.40A:4-45.2).

b. Notwithstanding any provisions of P.L.1976, c.68 (C.40A:4-45.1 et seq.) to the contrary, a county, which, for any local budget year beginning on or after January 1, 1993 for which the index rate is less than 5%, increases its final appropriations or county tax levy in an amount less than 5%, shall be permitted to appropriate the difference between the amount of its actual final appropriations or county tax levy under the 5% percentage rate, as an exception to its final appropriations or county tax levy in either of the next two succeeding years. In the year immediately following the year in which the amount of difference is so appropriated, the amount of difference shall be added to the final appropriations or county tax levy of the preceding year for the purposes of section 2 of P.L.1976, c.68 (C.40A:4-45.2).

3. This act shall take effect immediately.

Approved August 11, 1994.

## CHAPTER 101

AN ACT concerning certain pollution control equipment and pollution prevention strategies, and supplementing P.L.1954, c.212 (C.26:2C-1 et seq.) and P.L.1977, c.74 (C.58:10A-1 et seq.).

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

**C.26:2C-9.3 Findings, declarations, determinations.**

1. The Legislature finds and declares that to enhance and improve the quality of the environment and to protect and foster the public health of the citizens of New Jersey it is altogether fitting and proper to allow private entities who, pursuant to law, have applied for a permit for the purpose of constructing, installing, maintaining or operating pollution control equipment or devices or for the purpose of implementing pollution prevention process modifications to commence with that construction, installation, maintenance or operation or to implement those modifications while the Department of Environmental Protection is reviewing the permit application; and that authorizing such pre-approval actions will lead to the environmental benefits that would result from the timely construction, installation, maintenance and operation of pollution control equipment or devices and the prompt implementation of pollution prevention process modifications.

The Legislature therefore determines that it is within the public interest to allow private entities who have applied for permits to construct, install, maintain or operate pollution control equipment or devices or for permits to implement pollution prevention process modifications to undertake such construction, installation, maintenance or operation or to implement such process modifications while the department is reviewing their permit application, but with the clear and full understanding that they assume all risks for their actions.

**C.26:2C-9.4 Construction, etc., of air pollution control equipment during pendency of permit application.**

2. Except where specifically prohibited under the federal "Clean Air Act" (42 U.S.C. §7401 et seq.) pursuant to (a) 42 U.S.C. §7502 for new or modified major stationary sources; (b) 42 U.S.C. §7475 for major emitting facilities; (c) 42 U.S.C. §7411 for new or modified stationary sources; (d) 42 U.S.C. §7412 for the construction, reconstruction, or modification of any major source of hazardous air pollutants; or (e) any other such federal requirement, any private entity who has submitted to

the Department of Environmental Protection, pursuant to the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et seq.), an application for a permit to construct, install, maintain or operate pollution control equipment or devices or to implement pollution prevention process modifications may construct, install, maintain and operate such equipment or devices or implement such pollution prevention process modifications during the pendency of the permit application review process. A private entity intending to take action authorized pursuant to this section during the pendency of the permit application review process shall notify the department of the intent to undertake the action seven days prior to the commencement of the action. The prior notification may be made by certified mail or in a manner acceptable to the department.

Nothing in this section shall be construed to limit the department's discretion in establishing construction, installation, maintenance, and operating standards for such equipment or devices, or in otherwise reviewing the permit application, nor shall the costs incurred by the applicant for the construction, installation, maintenance or operation of such equipment or devices or the implementation of pollution prevention process modifications during the pendency of the permit application review process be used by an applicant as grounds for an appeal of the department's decision on the permit application. If the department determines that any pollution control equipment or devices or pollution prevention process modifications constructed, installed, maintained or implemented during the pendency of the permit application review process are not consistent with applicable federal and State laws, rules, or regulations, the department and the applicant shall enter into an agreement containing a schedule setting forth a date certain on which the applicant shall modify, replace or cease the operation of the pollution control equipment or devices or implementation of the pollution prevention process modifications. If the department and the applicant shall fail to enter into an agreement, the department may issue a schedule setting forth a date certain on which the applicant shall comply.

Failure of the applicant to comply with the schedule setting forth a date for compliance shall constitute a violation of P.L.1954, c.212 (C.26:2C-1 et seq.), and shall subject the applicant to penalties as prescribed by that act. A person who constructs, installs, maintains, or operates pollution control equipment or devices or who implements pollution prevention process modifications that the department determines are not consistent with applicable federal or State laws, rules, or regulations,

shall not be subject to civil or criminal penalties for that inconsistent action as long as the person's actions do not result in (1) the emission of an air contaminant that was not previously being emitted or that was not authorized to be emitted by the person's permit or certificate; or (2) an exceedance of any applicable air contaminant emission level in the permit or certificate.

Nothing in this section shall be construed to authorize the emission of an air contaminant not otherwise authorized to be emitted under a permit or certificate or the emission of an air contaminant at a level in excess of the air contaminant emission limitations contained in the permit or certificate. The provisions of this section shall not be construed to authorize or permit any construction, installation, maintenance, or operation which would result in any new air contaminant emissions but shall only apply to existing sources of air contaminant emissions.

As used in this section:

(1) "private entity" means any private individual, corporation, company, partnership, firm, association, owner or operator but shall not include, and the provisions of this section shall not apply to, any municipal, county, or State agency or authority or to any agency, authority or subdivision created by one or more municipal, county or State governments;

(2) "pollution prevention process modifications" means any physical or operational change to a process which reduces air contaminant emissions to the environment.

**C.58:10A-6.2 Findings, declarations, determinations.**

3. The Legislature finds and declares that to enhance and improve the quality of the environment and to protect and foster the public health of the citizens of New Jersey it is altogether fitting and proper to allow private entities who, pursuant to law, have applied for a permit for the purpose of building, installing, maintaining or operating any facility for the collection, treatment or discharge of any pollutant or for the purpose of implementing pollution prevention process modifications to commence with that building, installation, maintenance or operation or to implement those modifications while the Department of Environmental Protection is reviewing the permit application; and that authorizing such pre-approval actions would lead to the environmental benefits that would result from the timely building, installation, maintenance and operation of facilities and the prompt implementation of pollution prevention process modifications.

The Legislature therefore determines that it is within the public interest to allow private entities who have applied for permits to build, install, maintain or operate any facility for the collection, treatment or discharge of any pollutant or for permits to implement pollution prevention process modifications to undertake such building, installation, maintenance or operation or to implement such process modifications while the department is reviewing their permit application, but with the clear and full understanding that they assume all risks for their actions.

**C.58:10A-6.3 Installation, etc. of water pollution control facilities during pendency of permit application.**

4. Except where specifically prohibited under the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. §1251 et seq.) or any other such federal requirement, any private entity who has submitted to the Department of Environmental Protection, pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), an application for a permit to build, install, maintain or operate any facility for the collection, treatment or discharge of any pollutant or to implement pollution prevention process modifications may build, install, maintain and operate such facilities or implement such pollution prevention process modifications during the pendency of the permit application review process. A private entity intending to take action authorized pursuant to this section during the pendency of the permit application review process shall notify the department of the intent to undertake the action seven days prior to the commencement of the action. The prior notification may be made by certified mail or in a manner acceptable to the department.

Nothing in this section shall be construed to limit the department's discretion in establishing building, installation, maintenance and operating standards for such facilities, or in otherwise reviewing the permit application, nor shall the costs incurred by the applicant for the building, installation, maintenance or operation of such facilities or the implementation of pollution prevention process modifications during the pendency of the permit application review process be used by an applicant as grounds for an appeal of the department's decision on the permit application. If the department determines that any facilities or pollution prevention process modifications built, installed, maintained or implemented during the pendency of the permit application review process are not consistent with applicable federal and State laws, rules, or regulations, the department and the applicant shall enter into an agreement containing a schedule setting forth a date certain on

which the applicant shall modify, replace or cease the operation of the facilities or implementation of the pollution prevention process modifications. If the department and the applicant shall fail to enter into an agreement, the department may issue a schedule setting forth a date certain on which the applicant shall comply.

Failure of the applicant to comply with the schedule setting forth a date for compliance shall constitute a violation of P.L.1977, c.74 (C.58:10A-1 et seq.), and shall subject the applicant to penalties as prescribed in that act. A person who builds, installs, maintains, or operates any facility for the collection, treatment, or discharge of pollutants or who implements pollution prevention process modifications in a manner which the department determines is not consistent with applicable federal or State laws, rules, or regulations, shall not be subject to civil or criminal penalties for that inconsistent action as long as the person's actions did not result in (1) the discharge of a pollutant which was not authorized to be discharged by the person's permit or (2) an exceedance of any applicable discharge parameter in the permit.

Nothing in this section shall be construed to authorize a person to discharge a pollutant not otherwise authorized to be discharged by a permit held by that person or to discharge a pollutant at a level in excess of the discharge parameters contained in the permit.

The provisions of this section shall not be construed to authorize or permit any building, installation, maintenance, or operation which would result in any new source of discharge but shall only apply to facilities for existing permitted sources of discharges.

As used in this section:

(1) "private entity" means any private individual, corporation, company, partnership, firm, association, owner or operator but shall not include, and the provisions of this section shall not apply to, any municipal, county, or State agency or authority or to any agency, authority or subdivision created by one or more municipal, county or State governments;

(2) "pollution prevention process modifications" means any physical or operational change to a process which reduces water pollution discharges to the environment.

5. This act shall take effect immediately.

Approved August 11, 1994.



## CHAPTER 102

AN ACT concerning individual health benefits plans and amending P.L.1992, c.161.

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

1. Section 3 of P.L.1992, c.161 (C.17B:27A-4) is amended to read as follows:

**C.17B:27A-4 Offering of individual health benefits required.**

3. a. No later than 180 days after the effective date of this act, a carrier shall, as a condition of issuing health benefits plans in this State, offer individual health benefits plans. The plans shall be offered on an open enrollment, community rated basis, pursuant to the provisions of this act; except that a carrier shall be deemed to have satisfied its obligation to provide the individual health benefits plans by paying an assessment or receiving an exemption pursuant to section 11 of this act.

b. A carrier shall offer to an eligible person a choice of five individual health benefits plans, any of which may contain provisions for managed care. One plan shall be a basic health benefits plan, one plan shall be a managed care plan and three plans shall include enhanced benefits of proportionally increasing actuarial value. A carrier may elect to convert any individual contract or policy forms in force on the effective date of this act to any of the five benefit plans, except that the carrier may not convert more than 25% of existing contracts or policies each year, and the replacement plan shall be of no less actuarial value than the policy or contract being replaced.

Notwithstanding the provisions of this subsection to the contrary, at any time after three years after the effective date of this act, the board, by regulation, may reduce the number of plans required to be offered by a carrier.

Notwithstanding the provisions of this subsection to the contrary, a health maintenance organization which is a qualified health maintenance organization pursuant to the "Health Maintenance Organization Act of 1973," Pub.L.93-222 (42 U.S.C. § 300e et seq.) shall be permitted to offer a basic health benefits plan in accordance with the provisions of that law in lieu of the five plans required pursuant to this subsection.

c. (1) A basic health benefits plan shall provide the benefits set forth in section 55 of P.L.1991, c.187 (C:17:48E-22.2), sec-

tion 57 of P.L.1991, c.187 (C.17B:26B-2) or section 59 of P.L.1991, c.187 (C.26:2J-4.3), as the case may be.

(2) Notwithstanding the provisions of this subsection or any other law to the contrary, a carrier may, with the approval of the board, modify the coverage provided for in sections 55, 57, and 59 of P.L.1991, c.187 (C.17:48E-22.2, 17B:26B-2 and 26:2J-4.3, respectively) or provide alternative benefits or services from those required by this subsection if they are within the intent of this act or if the board changes the benefits included in the basic health benefits plan.

(3) A contract or policy for a basic health benefits plan provided for in this section may contain or provide for coinsurance or deductibles, or both, except that no deductible shall be payable in excess of a total of \$250 by an individual or \$500 by a family unit during any benefit year; and no coinsurance shall be payable in excess of a total of \$500 by an individual or by a family unit during any benefit year.

(4) Notwithstanding the provisions of paragraph (3) of this subsection or any other law to the contrary, a carrier may provide for increased deductibles or coinsurance for a basic health benefits plan if approved by the board or if the board increases deductibles or coinsurance included in the basic health benefits plan.

(5) The provisions of section 13 of P.L.1985, c.236 (C.17:48E-13), N.J.S.17B:26-1, and section 8 of P.L.1973, c.337 (C.26:2J-8) with respect to the filing of policy forms shall not apply to health plans issued on or after the effective date of this act.

(6) The provisions of section 27 of P.L.1985, c.236 (C.17:48E-27) and section 7 of P.L.1988, c.71 (C.17:48E-27.1) with respect to rate filings shall not apply to individual health plans issued on or after the effective date of this act.

d. Every group conversion contract or policy issued after the effective date of this act shall be issued pursuant to this section; except that this requirement shall not apply to any group conversion contract or policy in which a portion of the premium is chargeable to, or subsidized by, the group policy from which the conversion is made.

e. If all five of the individual health benefits plans are not established by the board by the effective date of P.L.1993, c.164 (C.17B:27A-16.1 et al.), a carrier may phase-in the offering of the five health benefits plans by offering each health benefits plan as it is established by the board; however, once the board establishes all five plans, the carrier shall be required to offer the five plans in accordance with the provisions of P.L.1992, c.161 (C.17B:27A-2 et al.).

2. Section 8 of P.L.1992, c.161 (C.17B:27A-9) is amended to read as follows:

**C.17B:27A-9 Determination of rates.**

8. a. The board shall make application to the Hospital Rate Setting Commission on behalf of all carriers for approval of discounted or reduced rates of payment to hospitals for health care services provided under an individual health benefits plan provided pursuant to this act.

b. In addition to discounted or reduced rates of hospital payment, the board shall make application on behalf of all carriers for any other subsidies, discounts, or funds that may be provided for under State or federal law or regulation. A carrier may include discounted or reduced rates of hospital payment and other subsidies or funds granted to the board to reduce its premium rates for individual health benefits plans subject to this act.

c. A carrier shall not issue individual health benefits plans on a new contract or policy form pursuant to this act until an informational filing of a full schedule of rates which applies to the contract or policy form has been filed with the board. The board shall forward the informational filing to the commissioner and the Attorney General.

d. A carrier shall make an informational filing with the board of any change in its rates for individual health benefits plans pursuant to section 3 of this act prior to the date the rates become effective. The board shall file the informational filing with the commissioner and the Attorney General. If the carrier has filed all information required by the board, the filing shall be deemed to be complete.

e. (1) Rates shall be formulated on contracts or policies required pursuant to section 3 of this act so that the anticipated minimum loss ratio for a contract or policy form shall not be less than 75% of the premium. The carrier shall submit with its rate filing supporting data, as determined by the board, and a certification by a member of the American Academy of Actuaries, or other individuals acceptable to the board and to the commissioner, that the carrier is in compliance with the provisions of this subsection.

(2) Following the close of each calendar year, if the board determines that a carrier's loss ratio was less than 75% for that calendar year, the carrier shall be required to refund to policy or contract holders the difference between the amount of net earned premium it received that year and the amount that would have been necessary to achieve the 75% loss ratio.

f. Notwithstanding the provisions of P.L.1992, c.161 (C.17B:27A-2 et seq.) to the contrary, the schedule of rates filed pursuant to this section by a carrier which insured at least 50% of the community-rated individually insured persons on the effective date of P.L.1992, c.161 (C.17B:27A-2 et seq.) shall not be required to produce a loss ratio which when combined with the carrier's administrative costs and investment income results in self-sustaining rates prior to January 1, 1996, for individual policies or contracts issued prior to August 1, 1993. The carrier shall, not later than 30 days after the effective date of P.L.1994, c.102 (C.17B:27A-4 et al.), file with the board for approval, a plan to achieve this objective.

3. This act shall take effect immediately.

Approved August 11, 1994.

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#### CHAPTER 103

AN ACT concerning mortgage guaranty insurance and amending P.L.1968, c.248.

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

1. Section 2 of P.L.1968, c.248 (C.17:46A-2) is amended to read as follows:

**C.17:46A-2 Definitions.**

2. Definitions. The definitions set forth in this section shall govern the construction of the terms used in this act.

(a) "Mortgage guaranty insurance" means (1) insurance against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, provided the improvement on such real estate is a residential building or a condominium unit or buildings designed for occupancy by not more than four families;

(2) Insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mort-

gage, deed of trust or other instrument constituting a lien or charge on real estate, provided the improvement on such real estate is a building or buildings designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes;

(3) Insurance against financial loss by reason of nonpayment of rent or other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real estate, provided the improvement on such real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

(b) "Authorized real estate security" means a note, bond or other evidence of indebtedness not exceeding 97 percent of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument constituting a first lien or charge on real estate; provided:

(1) The real estate loan secured in such manner is one which a bank, savings and loan association, or an insurance company, which is supervised and regulated by a department of this State or an agency of the federal government, is authorized to make.

(2) The improvement on such real estate is a building or buildings designed for occupancy as specified by subsections (a)(1) and (a)(2) of this section.

(3) The lien on such real estate may be subject and subordinate to the following:

(i) The lien of any public bond, assessment, or tax, when no installment, call or payment of or under such bond, assessment or tax is delinquent.

(ii) Outstanding mineral, oil or timber rights, rights-of-way, easements or rights-of-way or support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon such real property under which rents or profits are reserved to the owner thereof.

(c) "Contingency reserve" means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles.

(d) "Policyholders' surplus" means the aggregate of capital, surplus and contingency reserve.

2. This act shall take effect immediately.

Approved August 11, 1994.

## CHAPTER 104

AN ACT concerning the retirement of certain members of the Police and Firemen's Retirement System of New Jersey 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-9.4 Deeming of retirement before death of terminally ill member.**

1. Notwithstanding the provisions of subsection b. of section 9 of P.L.1944, c.255 (C.43:16A-9) to the contrary, a member of the Police and Firemen's Retirement System with at least 10 years of creditable service who is certified as terminally ill, applies for ordinary disability retirement, and dies before board approval of the retirement shall be deemed to be retired on the date of the member's death if the surviving beneficiary makes that request in writing to the board. Upon approval by the board, the request shall become irrevocable, and the survivors of the member shall receive all benefits due to survivors of an ordinary disability retiree of the retirement system.

2. This act shall take effect immediately and shall be retroactive to April 1, 1994.

Approved August 11, 1994.

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CHAPTER 105

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 \$60,000,000, 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, sec-

tion 1 of P.L.1990, c.97, section 1 of P.L.1991, c.324, section 1 of P.L.1992, c.37 and section 1 of P.L.1993, c.192 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>
NJL 708-08-3	Camden County MUA	\$ 2,200,000
S340699-06-1	Middlesex County UA	\$ 200,000
	<u>Total</u>	<u>\$ 2,400,000</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

1988 and 1994, 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. a. 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.

b. Sections 3 and 4 of P.L.1992, c.37 authorized the trust to make a loan for Project No. S340929-02 (Wayne Township: \$3,342,715). The Department of Environmental Protection has determined that Project No. S340929-02 is not necessary at this time. The trust is authorized to use the unexpended proceeds of the loan previously made to Wayne Township pursuant to P.L.1992, c.37 toward the financing of Project No. S340929-03 (Wayne Township).

4. The following wastewater treatment system projects shall be known and may be cited as the "State Fiscal Year 1995 Project Priority List":

<u>Project No.</u>	<u>Local Government Unit</u>	<u>Estimated Allowable Project Cost</u>
S340958-01	Gloucester City	\$ 600,000
S340815-02	Newark City	8,100,000
S340474-03	New Providence Borough	3,200,000
S340963-01	City of Trenton Water Works	9,700,000
S340943-01	Mt. Laurel Township MUA	6,900,000
S340818-04	Burlington County Board of Chosen Freeholders	4,800,000
S340632-05	Randolph Township MUA	2,000,000
S340650-04	Manchester Township	1,800,000
S340724-03	Morris Township	1,000,000
S340937-02	Berkeley Township SA	1,700,000
S340959-01	North Arlington Borough	700,000



S340954-01	Cherry Hill Township	600,000
S340779-02	Pequannock River Basin RSA	1,500,000
S340881-02	Hawthorne Borough	600,000
S340372-20	Ocean County UA	9,600,000
S340400-05	Stony Brook RSA	900,000
S340256-01	Allamuchy Township	<u>3,000,000</u>
	<u>Total</u>	<u>\$56,700,000</u>

5. In accordance with and subject to the provisions of sections 5, 6 and 23 of P.L.1985, c.334 (C.58:11B-5, 58:11B-6, and 58:11B-23) and as set forth in the financial plan required pursuant to section 21 of P.L.1985, c.334 (C.58:11B-21), any proceeds from bonds issued by the trust to make loans for priority wastewater 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 subsec-

tion 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 requirements enumerated in subsections a. through f. of this section shall not apply to Project No. S340929-03 (Wayne Township), for which the trust made a loan pursuant to sections 3 and 4 of P.L.1992, c.37 as Project No. S340929-02 (Wayne Township: \$3,342,715). The trust shall amend the existing loan agreement executed and delivered by Wayne Township to change the project scope.

The priority list and authorization for the making of loans pursuant to this act shall expire on July 1, 1995, 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 August 11, 1994.

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#### CHAPTER 106

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 \$50,000,000 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, section 1 of P.L.1992, c.38, or section 1 of P.L.1993, c.193, 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, section 6 of P.L.1992, c.38, and section 6 of P.L.1993, c.193, 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."

d. Sections 1 and 3 of P.L.1992, c.38 authorized the department to make a loan for Project No. S340929-02 (Wayne Township: \$3,342,715). The department has determined that Project No. S340929-02 is not necessary at this time. The department is authorized to use the unexpended proceeds of the loan previously made to Wayne Township pursuant to P.L.1992, c.38 toward the financing of Project No. S340929-03 (Wayne Township).

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</u> <u>Project Cost</u>
NJL 708-08-3	Camden County MUA	\$ 2,200,000
S340699-06-1	Middlesex County UA	\$ 200,000
	<u>Total</u>	<u>\$ 2,400,000</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 1988 and 1994 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 1995 Project Priority List":

<u>Project No.</u>	<u>Local Government Unit</u>	<u>Estimated Allowable</u> <u>Project Cost</u>
S340958-01	Gloucester City	\$ 600,000
S340815-02	Newark City	8,100,000
S340474-03	New Providence Borough	3,200,000
S340927-02	Hammonton Town of	1,900,000
340963-01	City of Trenton Water Works	9,700,000
S340943-01	Mt. Laurel Township MUA	6,900,000
S340818-04	Burlington County	
	Board of Chosen Freeholders	4,800,000
S340632-05	Randolph Township MUA	2,000,000
S340650-04	Manchester Township	1,800,000
S340724-03	Morris Township	1,000,000
S340937-02	Berkeley Township SA	1,700,000
S340959-01	North Arlington Borough	700,000
S340954-01	Cherry Hill Township	600,000
S340779-02	Pequannock River Basin RSA	1,500,000
S340881-02	Hawthorne Borough	600,000

S340372-20	Ocean County UA	9,600,000
S340400-05	Stony Brook RSA	900,000
S340256-01	Allamuchy Township	<u>3,000,000</u>
	<u>Total</u>	<u>\$58,600,000</u>

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

a. The commissioner has certified that the project is in compliance with the provisions of P.L.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.1994, c.105; except that this requirement shall not apply to Project No. S340927-02 (Town of Hammonton: \$1,900,000), 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.1994, c.105 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, 1995, 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.1994, c.105, 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.1994, c.67. 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, subsection a. of section 11 of P.L.1992, c.38, or subsection a. of P.L.1993, c.193, 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 August 11, 1994.

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#### CHAPTER 107

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, notes, other obligations.**

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 neither 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 1995 Financial Plan as approved by the Legislature pursuant to SCR No.74 of 1994 and ACR No.78 of 1994, and in compliance with subsection j. of this section, 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.

j. For the purpose of implementing the Fiscal Year 1995 Financial Plan as approved by the Legislature pursuant to SCR No. 74 of 1994 and ACR No. 78 of 1994, the trust shall provide the Senate Budget and Appropriations and the Assembly Appropriations Committee, or their successors, with a detailed statement by the trust of the costs of issuance of any bonds issued to implement the Fiscal Year 1995 Financial Plan, within thirty days of the issuance thereof, with specific reference, where applicable, to itemized costs for the following services:

- (1) bond counsel, tax counsel and special counsel;
- (2) financial advisor;
- (3) paying agent and registrar;
- (4) rating agencies;
- (5) official statement printing;
- (6) bond printing;
- (7) trustee;
- (8) credit enhancement;
- (9) liquidity facility; and
- (10) miscellaneous issuance costs; and

a calculation of underwriters' spread, broken down into the following components, and accompanied by a list of underwriters' spreads from recent comparable bond issues:

- (1) management fees;
- (2) underwriters' fees;
- (3) selling concessions;
- (4) underwriters' counsel; and
- (5) other costs.

2. This act shall take effect immediately.

Approved August 11, 1994.

## CHAPTER 108

AN ACT authorizing the creation of a debt of the State of New Jersey by the issuance of bonds of the State in an aggregate principal amount of \$160,000,000 for the purpose of planning, construction, reconstruction, development, erection, acquisition, extension, improvement, rehabilitation and equipment of community residences for clients of the Division of Developmental Disabilities and other State and community-based human services facilities; providing the ways and means to pay and discharge the principal of and interest on the bonds; providing for the submission of this act to the people at a general election; and making an appropriation therefor.

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

1. This act shall be known and may be cited as the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Bond Act of 1994."

2. The Legislature finds and declares:

a. The number of persons on the waiting list for services from the Division of Developmental Disabilities has increased 34%, from 3,090 to 4,150, between December 1990 and December 1993.

b. The number of persons on the waiting list who require a residential placement increased 36%, between December 1990 and December 1993, from 2,509 to 3,407.

c. The Department of Human Services has expended virtually all the 1989 bond funds that had been allocated to the Division of Developmental Disabilities to develop residential programs for its clients.

d. Implementation of the program in this act to reduce the division's waiting list will meet the immediate and critical need of the people of New Jersey, will substantially further the public interest, and can be most economically financed through a bond issue.

e. That the reduction of the division's waiting list and the meeting of critical needs financed by a bond issue be accomplished creatively in living environments that are typical of those in which persons without disabilities reside, utilizing existing community resources to the greatest extent possible.

f. That individuals served by use of this bond issue for the develop of community residences for clients of the division be

given, to the maximum extent possible, choice and control over where and with whom they live.

g. In addition, the State of New Jersey requires continuing funding to support community grants to develop such facilities as group homes and other community-based facilities for persons with mental illness, developmental disabilities, or other physical and emotional problems.

h. Increased community efforts are necessary to provide the proper level of services in local areas, and thereby reduce the demand for institutional care at State human services facilities and reduce institutional populations.

i. The State of New Jersey requires continuing funding for capital improvements at human services facilities, in the areas of life safety, accreditation, physical plant and program improvement projects.

j. Implementation of such programs will meet the immediate and critical need of the people of New Jersey, will substantially further the public interest, and can be most economically financed through a bond issue.

3. As used in this act, unless the context indicates a different meaning or intent:

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

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

"Commissioner" means the Commissioner of Human Services.

"Community residences" means group homes, supervised apartments, supportive living arrangements and other community residences for clients of the Division of Developmental Disabilities as decided upon and chosen by the individual and the individual's family.

"Construct" and "construction" means, in addition to the usual meaning thereof, the planning, erecting, purchasing, improving, developing, constructing, reconstructing, extending, rehabilitating, renovating, upgrading, demolishing and equipping of community residences and human services facilities.

"Cost" means the expenses incurred in connection with: the acquisition by purchase, lease, or otherwise, and the construction of a project authorized by this act; the acquisition by purchase, lease, or otherwise, and the development of any real or personal property for use in connection with a project authorized by this act, including any rights or interests therein, the execution of any

agreements and franchises deemed by the department to be necessary or useful and convenient in connection with any project authorized by this act; the procurement of engineering, inspection, planning, legal, financial, or other professional services, including the services of a bond register or an authenticating agent; the issuance of bonds, or any interest or discount thereon; the administrative, organizational, operating or other expenses incident to the financing, completing, and placing into service of any project authorized by this act; the establishment of a reserve fund or funds for working capital, operating, maintenance, or replacement expenses and for the payment or security of principal or interest on bonds, as the Director of the Division of Budget and Accounting in the Department of the Treasury may determine; and reimbursement to any fund of the State of moneys which may have been transferred or advanced therefrom to any fund created by this act, or any moneys which may have been expended therefrom for, or in connection with, this act.

“Department” means the Department of Human Services.

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

“Human services facilities” means structures, institutions, and facilities under the supervision of the Department of Human Services, including community residences; and structures, institutions and facilities necessary for the operation of State, county, municipal or private programs for persons who have either a mental illness, developmental disability, or other physical and emotional problems, including community residences.

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



b. Funds shall be appropriated for the construction of community residences only in accordance with a master plan developed through an open planning process that includes participation of potential consumers and families of potential consumers of community residences authorized by this act, and which reflects to the maximum extent possible the creation of residences that are typical of those in which people who are not disabled reside, and guarantees consumer choice and control over where and with whom the individual will reside. The plan shall provide the following information:

(1) The number of persons to be served and, specifically, the number of children and adolescents to be served;

(2) The number and types of community residences that are to be developed, their approximate cost and their geographic location;

(3) The annual operating costs of any new or expanded community residences that are to be established and the cost of any ancillary services that are to be provided;

(4) the housing needs of those with low incidence disabilities and those who have been historically underserved.

c. (1) Of the amount allocated to the department pursuant to subsection b. of section 5 of this act for State institutions for the mentally ill, the developmentally disabled or other State operated facilities, funds shall be appropriated only in accordance with an updated master plan. The updated plan shall include a needs assessment of the capital facilities required to provide a level of care that meets current licensure and accreditation standards and requirements and an integrated plan for the use and rehabilitation of current facilities with new capital facilities. The plan shall indicate the amount to be spent at each institution and list those projects which may be undertaken at each institution. The plan shall be developed in consultation with appropriate community providers and shall be submitted by the commissioner to the Commission on Capital Budgeting and Planning for review and approval.

(2) Of the amount allocated to the department pursuant to subsection b. of section 5 of this act for community-based facilities for persons with mental illness, developmental disabilities, or other physical and emotional problems, funds shall be appropriated only in accordance with a master plan which provides the following information:

(a) the amount to be expended on persons with mental illness, developmental disabilities, or other physical and emotional problems;

(b) the amount to be expended on renovations or other capital projects of existing programs and facilities;

(c) the amount to be expended on establishing new or expanding existing programs and the type of programs to be established or expanded;

(d) the amount to be expended on behalf of services for adolescents and children with mental illness, developmental disabilities or other physical and emotional problems;

(e) the number of clients residing in departmental institutions and the number of clients residing in the community which will be served by these new or expanded programs; and

(f) the annual operating costs of any new or expanded programs that are to be established.

d. The plans developed pursuant to subsections b. and c. of this section shall be updated annually until all bond funds are appropriated.

5. a. Bonds of the State of New Jersey are authorized to be issued in an aggregate principal amount not exceeding \$160,000,000 for the purpose of capital expenditure for the cost of construction of community residences for clients of the Division of Developmental Disabilities and human services facilities.

b. Of this total, \$30,000,000 shall be for State institutions and \$130,000,000 shall be for community-based facilities for persons with mental illness, developmental disabilities and other physical and emotional problems. The proceeds from the sale of bonds shall be utilized for the following purposes:

(1) Life safety projects to abate hazards to clients and employees at human services facilities.

(2) Accreditation projects to provide improved living conditions for clients, in accordance with requirements contained in accreditation and certification surveys.

(3) Community grants for physical plant improvements of existing community facilities.

(4) Community grants to create new and expand existing residential and service facilities in the community, including community residences for clients of the Division of Developmental Disabilities.

(5) Physical plant projects to maintain the operational integrity of human services facilities.

(6) Program improvement projects to materially add to or upgrade human services facilities.

6. The bonds authorized under this act shall be serial bonds, term bonds, or a combination thereof, and shall be known as "Developmental Disabilities' Waiting List Reduction and Human

Services Facilities Construction Bonds.” They shall be issued from time to time as the issuing officials herein named shall determine and may be issued in coupon form, fully-registered form or book-entry form. The bonds may be subject to redemption prior to maturity and shall mature and be paid not later than 35 years from the respective dates of their issuance.

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

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

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

hold office at the time of issuance, or at the time of the delivery of the bonds to the purchaser thereof.

10. a. The bonds shall recite that they are issued for the purposes set forth in section 5 of this act, that they are issued pursuant to this act, that this act was submitted to the people of the State at the general election held in the month of November, 1994, and that this act was approved by a majority of the legally qualified voters of the State voting thereon at the election. This recital shall be conclusive evidence of the authority of the State to issue the bonds and their validity. Any bonds containing this recital shall, in any suit, action or proceeding involving their validity, be conclusively deemed to be fully authorized by this act and to have been issued, sold, executed and delivered in conformity herewith and with all other provisions of law applicable hereto, and shall be incontestable for any cause.

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

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

12. The bonds shall be issued and sold at the price or prices and under the terms, conditions and regulations as the issuing officials may prescribe, after notice of the sale, published at least once in at least three newspapers published in this State, and at least once in a publication carrying municipal bond notices and devoted primarily to financial news, published in this State or in the city of New York, the first notice to appear at least five days prior to the day of bidding. The notice of sale may contain a provision to the effect that any bid in pursuance thereof may be rejected. In the event of rejection or failure to receive any acceptable bid, the issuing officials, at any time within 60 days from the date of the advertised sale, may sell the bonds at a private sale at such price or prices and under the terms and conditions as the issuing officials may prescribe. The issuing

officials may sell all or part of the bonds of any series as issued to any State fund or to the federal government or any agency thereof, at a private sale, without advertisement.

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

14. The proceeds derived from the sale of bonds shall be paid to the State Treasurer in a separate fund, which shall be known as the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund." The proceeds of this fund shall be deposited in those depositories as may be selected by the State Treasurer to the credit of the fund.

15. a. The moneys in the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund" are specifically dedicated and shall be applied to the cost of the purposes set forth in section 5 of this act. However, no moneys in the fund shall be expended for those purposes, except as otherwise authorized by this act, without the specific appropriation thereof by the Legislature, but bonds may be issued as herein provided, notwithstanding that the Legislature shall not have then adopted an act making a specific appropriation of any of the moneys. Any act appropriating moneys from the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund" shall identify the community residences and human services facilities to be funded by the moneys.

b. At any time prior to the issuance and sale of bonds under this act, the State Treasurer is authorized to transfer from any available moneys in any fund of the treasury of the State to the credit of the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund" those sums as the State Treasurer may deem necessary. The sums so transferred shall be returned to the same fund of the treasury of the State by the State Treasurer from the proceeds of the sale of the first issue of bonds.

c. Pending their application to the purposes provided in this act, the moneys in the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund" may be invested and reinvested as are other trust funds in the custody of the State Treasurer, in the manner provided by law. Net earnings received from the investment or deposit of moneys in the "Devel-

opmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund" shall be paid into the General Fund.

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

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

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

19. Any bond or bonds issued hereunder, which are subject to the "Refunding Bond Act of 1985," P.L.1985, c.74 as amended by P.L.1992, c.182 (C.49:2B-1 et seq.), shall no longer be deemed to be outstanding, shall no longer constitute a direct obligation of the State of New Jersey, and the faith and credit of the State shall no longer be pledged to the payment of the principal of, redemption premium, if any, and interest on the bonds, and the bonds shall be secured solely by and payable solely from moneys and government securities deposited in trust with one or more trustees or escrow agents, which trustees and escrow agents shall be trust companies or national or state banks having powers of a trust

company, located either within or without the State, as provided herein, whenever there shall be deposited in trust with the trustees or escrow agents, as provided herein, either moneys or government securities, including government securities issued or held in book-entry form on the books of the Department of Treasury of the United States, the principal of and interest on which when due will provide money which, together with the moneys, if any, deposited with the trustees or escrow agents at the same time, shall be sufficient to pay when due the principal of, redemption premium, if any, and interest due and to become due on the bonds on or prior to the redemption date or maturity date thereof, as the case may be; provided the government securities shall not be subject to redemption prior to their maturity other than at the option of the holder thereof. The State of New Jersey hereby covenants with the holders of any bonds for which government securities or moneys shall have been deposited in trust with the trustees or escrow agents as provided in this section that, except as otherwise provided in this section, neither the government securities nor moneys so deposited with the trustees or escrow agents shall be withdrawn or used by the State for any purpose other than, and shall be held in trust for, the payment of the principal of, redemption premium, if any, and interest to become due on the bonds; provided that any cash received from the principal or interest payments on the government securities deposited with the trustees or escrow agents, to the extent the cash will not be required at any time for that purpose, shall be paid over to the State, as received by the trustees or escrow agents, free and clear of any trust, lien, pledge or assignment securing the bonds; and to the extent the cash will be required for that purpose at a later date, shall, to the extent practicable and legally permissible, be reinvested in government securities maturing at times and in amounts sufficient to pay when due the principal of, redemption premium, if any, and interest to become due on the bonds on and prior to the redemption date or maturity date thereof, as the case may be, and interest earned from the reinvestments shall be paid over to the State, as received by the trustees or escrow agents, free and clear of any trust, lien or pledge securing the bonds.

Notwithstanding anything to the contrary contained herein: a. the trustees or escrow agents shall, if so directed by the issuing officials, apply moneys on deposit with the trustees or escrow agents pursuant to the provisions of this section, and redeem or sell government securities so deposited with the trustees or escrow agents, and apply the proceeds thereof to (1) the purchase of the bonds which were refinanced by the deposit with the trustees or escrow agents of the moneys and government securities and immediately thereafter cancel all bonds

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

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

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

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

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



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

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

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

taxing districts of the county in proportion to the ratables as ascertained for the current year.

23. For the purpose of complying with the provisions of the State Constitution, this act shall be submitted to the people at the general election to be held in the month of November, 1994. To inform the people of the contents of this act, it shall be the duty of the Secretary of State, after this section takes effect, and at least 60 days prior to the election, to cause this act to be published at least once in one or more newspapers of each county, if any newspapers be published therein and to notify the clerk of each county of this State of the passage of this act; and the clerks respectively, in accordance with the instructions of the Secretary of State, shall have printed on each of the ballots the following:

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

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

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

		<p style="text-align: center;"><b>DEVELOPMENTAL DISABILITIES' WAITING LIST REDUCTION AND HUMAN SERVICES FACILITIES CONSTRUCTION BOND ISSUE</b></p> <p>Shall the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Bond Act of 1994," which authorizes the State to issue bonds in the amount of \$160,000,000 for the purpose of the planning, construction, reconstruction, development, erection, acquisition, extension, improvement, rehabilitation and equipment of community residences for clients of the Division of Developmental Disabilities and other State and community-based human services facilities; and providing the ways and means to pay the interest on the debt and also to pay and discharge the principal thereof, be approved?</p>
	Yes.	

	No.	<p style="text-align: center;"><b>INTERPRETIVE STATEMENT</b></p> <p>Approval of this act will authorize the sale of \$160,000,000 in State general obligation bonds. Of the total, \$30,000,000 will be used for capital improvements at State institutions operated by the Department of Human Services and the remaining \$130,000,000 will be used for various community-based facilities. These funds will be used for the development of new community residences for clients of the Division of Developmental Disabilities; life safety projects to abate hazards to clients and employees at human services facilities; accreditation projects to provide improved living conditions for clients, in accordance with requirements contained in accreditation and certification surveys; community grants for physical plant improvements of existing community facilities community grant projects to create new and expand existing residential and service facilities in the community; physical plant projects to maintain the operational integrity of human services facilities; and program improvement projects to materially add to or upgrade human services facilities.</p>
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The fact and date of the approval or passage of this act, as the case may be, may be inserted in the appropriate place after the title in the ballot. No other requirements of law of any kind or character as to notice or procedure, except as herein provided, need be adhered to.

The votes cast for and against the approval of this act, by ballot or voting machine, shall be counted and the result thereof returned by the election officer, and a canvass of the election had in the same manner as is provided for by law in the case of the election of a Governor, and the approval or disapproval of this act so determined shall be declared in the same manner as the result of an election for a Governor, and if there is a majority of all votes cast for and against it at the election in favor of the

approval of this act, then all the provisions of this act not made effective theretofore shall take effect forthwith.

24. There is appropriated the sum of \$5,000 to the Department of State for expenses in connection with the publication of notice pursuant to section 23 of this act.

25. The commissioner shall submit to the State Treasurer and the commission with the department's annual budget request a plan for the expenditure of funds from the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund" for the upcoming fiscal year. The plan shall include the following information: a performance evaluation of the expenditures made from the fund to date; a description of programs planned during the upcoming fiscal year; a copy of the regulations in force governing the operation of programs that are financed, in part or in whole, by funds from the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund"; and an estimate of expenditures for the upcoming fiscal year.

26. Immediately following the submission to the Legislature of the Governor's annual budget message, the commissioner shall submit to the relevant standing committees of the Legislature, as designated by the President of the Senate and the Speaker of the General Assembly, and to the Joint Budget Oversight Committee, or its successor, a copy of the plan called for under section 25 of this act, together with such changes therein as may have been required by the Governor's budget message.

27. Not less than 30 days prior to entering into any contract, lease, obligation, or agreement to effectuate the purposes of this act, the commissioner shall report to and consult with the Joint Budget Oversight Committee, or its successor.

28. All appropriations from the "Developmental Disabilities' Waiting List Reduction and Human Services Facilities Construction Fund" shall be by specific allocation for each project, and any transfer of any funds so appropriated shall require the approval of the Joint Budget Oversight Committee, or its successor.

29. This section and sections 23 and 24 of this act shall take effect immediately and the remainder of this act shall take effect as and when provided in section 23.

Approved August 30, 1994.

#### CHAPTER 109

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, 1995 and regulating the disbursement thereof," approved June ....., 1994 (P.L.1994, c.....) (Now pending before the Legislature as Senate, No.3000 or Assembly, No.2000 of 1994).

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.1994, c.67, there is appropriated out of the General Fund the following sums for the purposes specified:

DIRECT STATE SERVICES  
50 DEPARTMENT OF HIGHER EDUCATION  
*30 Educational, Cultural and Intellectual Development*  
*36 Higher Educational Services*  
*5600 Rutgers, The State University*  
*Rutgers University Programs*

17-5600 Institutional Support..... \$700,000

Special Purpose:

In Lieu of Tax Payments to

New Brunswick ..... (\$700,000)

Total Appropriation,

Department of Higher Education ..... \$700,000

2. This act shall take effect immediately and if enacted after July 1, 1994, shall be retroactive to that date.

Approved September 7, 1994.

## CHAPTER 110

AN ACT providing an additional purpose for county improvement authorities and amending P.L.1960, c.183.

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

1. Section 11 of P.L.1960, c.183 (C.40:37A-54) is amended to read as follows:

**C.40:37A-54 Purposes.**

11. The purposes of every authority shall be (a) provision within the county or any beneficiary county of public facilities for use by the State, the county or any beneficiary county, or any municipality in any such county, or any two or more or any subdivisions, departments, agencies or instrumentalities of any of the foregoing for any of their respective governmental purposes, (b) provision within the county or any beneficiary county of public facilities for use as convention halls, or the rehabilitation, improvement or enlargement of any convention hall, including appropriate and desirable appurtenances located within the convention hall or near, adjacent to or over it within boundaries determined at the discretion of the authority, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors, (c) provision within the county or any beneficiary county of structures, franchises, equipment and facilities for operation of public transportation or for terminal purposes, including development and improvement of port terminal structures, facilities and equipment for public use in counties in, along or through which a navigable river flows, (d) provision within the county or any beneficiary county of structures or other facilities used or operated by the authority or any governmental unit in connection with, or relative to development and improvement of, aviation for military or civilian purposes, including research in connection therewith, and including structures or other facilities for the accommodation of passengers, (e) provision within the county or any beneficiary county of a public facility for a combination of governmental and nongovernmental uses; provided that not more than 50% of the usable space in any such facility shall be made available for nongovernmental use under a lease or other agreement by or with the

authority, (f) acquisition of any real property within the county or any beneficiary county, with or without the improvements thereof or thereon or personal property appurtenant or incidental thereto, from the United States of America or any department, agency or instrumentality heretofore or hereafter created, designated or established by or for it, and the clearance, development or redevelopment, improvement, use or disposition of the acquired lands and premises in accordance with the provisions and for the purposes stated in this act, including the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of improvements on or to said lands and premises, and structures and facilities incidental to the foregoing as may be necessary, convenient or desirable, (g) acquisition, construction, maintenance and operation of garbage and solid waste disposal systems for the purpose of collecting and disposing of garbage, solid waste or refuse matter, whether owned or operated by any person, the authority or any other governmental unit, within or without the county or any beneficiary county, (h) the improvement, furtherance and promotion of the tourist industries and recreational attractiveness of the county or any beneficiary county through the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public, which facilities may include, without being limited to, a center for the performing and visual arts, (i) provision of loans and other financial assistance and technical assistance for the construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities designed to provide decent, safe and sanitary dwelling units for persons of low and moderate income in need of housing, including the acquisition of land, equipment or other real or personal properties which the authority determines to be necessary, convenient or desirable appurtenances, all in accordance with the provisions of this act, as amended and supplemented, (j) planning, initiating and carrying out redevelopment projects for the elimination, and for the prevention of the development or spread of blighted, deteriorated or deteriorating areas and the disposition, for uses in accordance with the objectives of the redevelopment project, of any property or part thereof acquired in the area of such project, (k) any combination or combinations of the foregoing or following, and (l) subject to the prior approval of the Local Finance Board, the planning, design, acquisition, construction, improvement, renovation, installation, maintenance and operation of

facilities or any other type of real or personal property within the county for a corporation or other person organized for any one or more of the purposes described in subsection a. of N.J.S.15A:2-1 except those facilities or any other type of real or personal property which can be financed pursuant to the provisions of P.L.1972, c.29 (C.26:21-1 et seq.) as amended.

2. This act shall take effect immediately.

Approved September 20, 1994.

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## CHAPTER 111

AN ACT concerning open space preservation, parks, and recreation areas, and supplementing Title 40 of the Revised Statutes.

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

**C.40:12-29 Donations, solicitation authorized.**

1. Subject to all relevant laws, rules or regulations, any county or municipality, or any entity or agency thereof, may solicit and accept donations, by gift, bequest, or devise, of real property, funds, personal property, in-kind items, or services by private persons to the soliciting governmental entity or agency, for the purpose of public open space preservation or the establishment and maintenance of public parks, forests, recreation areas, or wildlife management areas, preserves, or sanctuaries.

Any such donation may be publicly recognized by the county or municipality, or the appropriate entity or agency thereof, receiving the donation.

Any solicitation for a donation of \$7,500 or more in value shall be made a matter of public record by the county or municipality, or the appropriate entity or agency thereof, as the case may be, by adoption of a resolution or ordinance authorizing the solicitation.

2. This act shall take effect immediately.

Approved September 20, 1994.



## CHAPTER 112

AN ACT concerning contributions made to the State disability benefits fund, amending R.S.43:21-7, 43:21-19 and P.L.1948, c.110 and repealing section 46 of P.L.1994, c.67.

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

1. R.S.43:21-7 is amended to read as follows:

**Contributions.**

43:21-7. Contributions. Employers other than governmental entities, whose benefit financing provisions are set forth in section 4 of P.L.1971, c.346 (C.43:21-7.3), and those nonprofit organizations liable for payment in lieu of contributions on the basis set forth in section 3 of P.L.1971, c.346 (C.43:21-7.2), shall pay to the controller for the unemployment compensation fund, contributions as set forth in subsections (a), (b) and (c) hereof, and the provisions of subsections (d) and (e) shall be applicable to all employers, consistent with the provisions of the "unemployment compensation law" and the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.).

(a) Payment.

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter (R.S.43:21-1 et seq.), with respect to having individuals in his employ during that calendar year, at the rates and on the basis hereinafter set forth. Such contributions shall become due and be paid by each employer to the controller for the fund, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to \$0.005 or more, in which case it shall be increased to \$0.01.

(b) Rate of contributions. Each employer shall pay the following contributions:

(1) For the calendar year 1947, and each calendar year thereafter, 2 7/10% of wages paid by him during each such calendar year, except as otherwise prescribed by subsection (c) of this section.

(2) The "wages" of any individual, with respect to any one employer, as the term is used in this subsection (b) and in subsec-

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tions (c), (d) and (e) of this section 7, shall include the first \$4,800.00 paid during calendar year 1975, for services performed either within or without this State; provided that no contribution shall be required by this State with respect to services performed in another state if such other state imposes contribution liability with respect thereto. If an employer (hereinafter referred to as a successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid wages with respect to employment equal to the first \$4,800.00 paid during calendar year 1975, any wages paid to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer.

(3) For calendar years beginning on and after January 1, 1976, the "wages" of any individual, as defined in the preceding paragraph (2) of this subsection (b), shall be established and promulgated by the Commissioner of Labor on or before September 1 of the preceding year and shall be 28 times the Statewide average weekly remuneration paid to workers by employers, as determined under R.S.43:21-3(c), raised to the next higher multiple of \$100.00 if not already a multiple thereof, provided that if the amount of wages so determined for a calendar year is less than the amount similarly determined for the preceding year, the greater amount will be used; provided, further, that if the amount of such wages so determined does not equal or exceed the amount of wages as defined in subsection (b) of section 3306 of the Federal Unemployment Tax Act, Chapter 23 of the Internal Revenue Code of 1986 (26 U.S.C. §3306(b)), the wages as determined in this paragraph in any calendar year shall be raised to equal the amount established under the Federal Unemployment Tax Act for that calendar year.

(c) Future rates based on benefit experience.

(1) A separate account for each employer shall be maintained and this shall be credited with all the contributions which he has paid on his own behalf on or before January 31 of any calendar year with respect to employment occurring in the preceding calendar year; provided, however, that if January 31 of any calendar

year falls on a Saturday or Sunday, an employer's account shall be credited as of January 31 of such calendar year with all the contributions which he has paid on or before the next succeeding day which is not a Saturday or Sunday. But nothing in this chapter (R.S.43:21-1 et seq.) shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid with respect to benefit years commencing on and after January 1, 1953, to any individual on or before December 31 of any calendar year with respect to unemployment in such calendar year and in preceding calendar years shall be charged against the account or accounts of the employer or employers in whose employment such individual established base weeks constituting the basis of such benefits. Benefits paid under a given benefit determination shall be charged against the account of the employer to whom such determination relates. When each benefit payment is made, either a copy of the benefit check or other form of notification shall be promptly sent to the employer against whose account the benefits are to be charged. Such copy or notification shall identify the employer against whose account the amount of such payment is being charged, shall show at least the name and social security account number of the claimant and shall specify the period of unemployment to which said check applies. If the total amount of benefits paid to a claimant and charged to the account of the appropriate employer exceeds 50% of the total base year, base week wages paid to the claimant by that employer, then such employer shall have canceled from his account such excess benefit charges as specified above.

Each employer shall be furnished an annual summary statement of benefits charged to his account.

(2) Regulations may be prescribed for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(3) No employer's rate shall be lower than 5.4% unless assignment of such lower rate is consistent with the conditions applicable to additional credit allowance for such year under section 3303(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. §3303(a)(1)), any other provision of this section to the contrary notwithstanding.

(4) Employer Reserve Ratio. (A) Each employer's rate shall be 2 8/10%, except as otherwise provided in the following provi-

sions. No employer's rate for the 12 months commencing July 1 of any calendar year shall be other than  $2\frac{8}{10}\%$ , unless as of the preceding January 31 such employer shall have paid contributions with respect to wages paid in each of the three calendar years immediately preceding such year, in which case such employer's rate for the 12 months commencing July 1 of any calendar year shall be determined on the basis of his record up to the beginning of such calendar year. If, at the beginning of such calendar year, the total of all his contributions, paid on his own behalf, for all past years exceeds the total benefits charged to his account for all such years, his contribution rate shall be:

(1)  $2\frac{5}{10}\%$ , if such excess equals or exceeds 4%, but less than 5%, of his average annual payroll (as defined in paragraph (2), subsection (a) of R.S.43:21-19);

(2)  $2\frac{2}{10}\%$ , if such excess equals or exceeds 5%, but is less than 6%, of his average annual payroll;

(3)  $1\frac{9}{10}\%$ , if such excess equals or exceeds 6%, but is less than 7%, of his average annual payroll;

(4)  $1\frac{6}{10}\%$ , if such excess equals or exceeds 7%, but is less than 8%, of his average annual payroll;

(5)  $1\frac{3}{10}\%$ , if such excess equals or exceeds 8%, but is less than 9%, of his average annual payroll;

(6) 1%, if such excess equals or exceeds 9%, but is less than 10%, of his average annual payroll;

(7)  $\frac{7}{10}$  of 1%, if such excess equals or exceeds 10%, but is less than 11%, of his average annual payroll;

(8)  $\frac{4}{10}$  of 1%, if such excess equals or exceeds 11% of his average annual payroll.

(B) If the total of an employer's contributions, paid on his own behalf, for all past periods for the purposes of this paragraph (4), is less than the total benefits charged against his account during the same period, his rate shall be:

(1) 4%, if such excess is less than 10% of his average annual payroll;

(2)  $4\frac{3}{10}\%$ , if such excess equals or exceeds 10%, but is less than 20%, of his average annual payroll;

(3)  $4\frac{6}{10}\%$ , if such excess equals or exceeds 20% of his average annual payroll.

(C) Specially assigned rates. If no contributions were paid on wages for employment in any calendar year used in determining the average annual payroll of an employer eligible for an assigned rate under this paragraph (4), the employer's rate shall be specially assigned as follows: (i) if the reserve balance in its account

is positive, its assigned rate shall be the highest rate in effect for positive balance accounts for that period, or 5.4%, whichever is higher, and (ii) if the reserve balance in its account is negative, its assigned rate shall be the highest rate in effect for deficit accounts for that period.

(D) The contribution rates prescribed by subparagraphs (A) and (B) of this paragraph (4) shall be increased or decreased in accordance with the provisions of paragraph (5) of this subsection (c) for experience rating periods through June 30, 1986.

(5) (A) Unemployment Trust Fund Reserve Ratio. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 4% but is less than 7% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by  $\frac{3}{10}$  of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection. If on March 31 of any calendar year the balance of the unemployment trust fund exceeds  $2\frac{1}{2}\%$  but is less than 4% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be increased by  $\frac{6}{10}$  of 1% over the contribution rate otherwise established under the provisions of paragraph (3) or (4) of this subsection.

If on March 31 of any calendar year the balance of the unemployment trust fund is less than  $2\frac{1}{2}\%$  of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer (1) eligible for a contribution rate calculation based upon benefit experience, shall be increased by (i)  $\frac{6}{10}$  of 1% over the contribution rate otherwise established under the provisions of paragraph (3), (4)(A) or (4)(B) of this subsection, and (ii) an additional amount equal to 20% of the total rate established herein, provided, however, that the final contribution rate for each employer shall be computed to the nearest multiple of  $\frac{1}{10}\%$  if not already a multiple thereof; (2) not eligible for a contribution rate calculation based upon benefit experience, shall be increased by  $\frac{6}{10}$  of 1% over the contribution rate otherwise established under the provisions of

paragraph (4) of this subsection. For the period commencing July 1, 1984 and ending June 30, 1986, the contribution rate for each employer liable to pay contributions under R.S.43:21-7 shall be increased by a factor of 10% computed to the nearest multiple of 1/10% if not already a multiple thereof.

(B) If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 10% but is less than 12 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by 3/10 of 1% under the contribution rate otherwise established under the provisions of paragraphs (3) and (4) of this subsection; provided that in no event shall the contribution rate of any employer be reduced to less than 4/10 of 1%. If on March 31 of any calendar year the balance in the unemployment trust fund equals or exceeds 12 1/2% of the total taxable wages reported to the controller as of that date in respect to employment during the preceding calendar year, the contribution rate, effective July 1 following, of each employer eligible for a contribution rate calculation based upon benefit experience, shall be reduced by 6/10 of 1% if his account for all past periods reflects an excess of contributions paid over total benefits charged of 3% or more of his average annual payroll, otherwise by 3/10 of 1% under the contribution rate otherwise established under the provisions of paragraphs (3) and (4) of this subsection; provided that in no event shall the contribution rate of any employer be reduced to less than 4/10 of 1%.

(C) The "balance" in the unemployment trust fund, as the term is used in subparagraphs (A) and (B) above, shall not include moneys credited to the State's account under section 903 of the Social Security Act, as amended (42 U.S.C. §1103), during any period in which such moneys are appropriated for the payment of expenses incurred in the administration of the "unemployment compensation law."

(D) Prior to July 1 of each calendar year the controller shall determine the Unemployment Trust Reserve Ratio, which shall be calculated by dividing the balance of the unemployment trust fund as of the prior March 31 by total taxable wages reported to the controller by all employers as of March 31 with respect to their employment during the last calendar year.

(E) With respect to experience rating years beginning on or after July 1, 1986, the new employer rate or the unemployment experience rate of an employer under this section shall be the rate which appears in the column headed by the Unemployment Trust Fund Reserve Ratio as of the applicable calculation date and on the line with the Employer Reserve Ratio, as defined in paragraph 4 of this subsection (R.S.43:21-7 (c)(4)), as set forth in the following table:

EXPERIENCE RATING TAX TABLE  
Fund Reserve Ratio<sup>1</sup>

Employer Reserve Ratio <sup>2</sup>	10.00% and Over A	7.00% to 9.99% B	4.00% to 6.99% C	2.50% to 3.99% D	2.49% and Under E
<b>Positive Reserve Ratio:</b>					
17% and over	0.3	0.4	0.5	0.6	1.2
16.00% to 16.99%	0.4	0.5	0.6	0.6	1.2
15.00% to 15.99%	0.4	0.6	0.7	0.7	1.2
14.00% to 14.99%	0.5	0.6	0.7	0.8	1.2
13.00% to 13.99%	0.6	0.7	0.8	0.9	1.2
12.00% to 12.99%	0.6	0.8	0.9	1.0	1.2
11.00% to 11.99%	0.7	0.8	1.0	1.1	1.2
10.00% to 10.99%	0.9	1.1	1.3	1.5	1.6
9.00% to 9.99%	1.0	1.3	1.6	1.7	1.9
8.00% to 8.99%	1.3	1.6	1.9	2.1	2.3
7.00% to 7.99%	1.4	1.8	2.2	2.4	2.6
6.00% to 6.99%	1.7	2.1	2.5	2.8	3.0
5.00% to 5.99%	1.9	2.4	2.8	3.1	3.4
4.00% to 4.99%	2.0	2.6	3.1	3.4	3.7
3.00% to 3.99%	2.1	2.7	3.2	3.6	3.9
2.00% to 2.99%	2.2	2.8	3.3	3.7	4.0
1.00% to 1.99%	2.3	2.9	3.4	3.8	4.1
0.00% to 0.99%	2.4	3.0	3.6	4.0	4.3
<b>Deficit Reserve Ratio:</b>					
-0.00% to -2.99%	3.4	4.3	5.1	5.6	6.1
-3.00% to -5.99%	3.4	4.3	5.1	5.7	6.2
-6.00% to -8.99%	3.5	4.4	5.2	5.8	6.3
-9.00% to -11.99%	3.5	4.5	5.3	5.9	6.4
-12.00% to -14.99%	3.6	4.6	5.4	6.0	6.5
-15.00% to -19.99%	3.6	4.6	5.5	6.1	6.6
-20.00% to -24.99%	3.7	4.7	5.6	6.2	6.7

-25.00%to-29.99%	3.7	4.8	5.6	6.3	6.8
-30.00%to-34.99%	3.8	4.8	5.7	6.3	6.9
-35.00%and under	5.4	5.4	5.8	6.4	7.0
New Employer Rate	2.8	2.8	2.8	3.1	3.4

<sup>1</sup>Fund balance as of March 31 as a percentage of taxable wages in the prior calendar year.

<sup>2</sup>Employer Reserve Ratio (Contributions minus benefits as a percentage of employer's taxable wages).

(F) With respect to experience rating years beginning on or after July 1, 1986, if the balance of the unemployment trust fund as of the prior March 31 is negative, the contribution rate for each employer liable to pay contributions, as computed under subparagraph E of this paragraph (5), shall be increased by a factor of 10% computed to the nearest multiple of 1/10% if not already a multiple thereof.

(G) On or after January 1, 1993, and ending December 31, 1997, notwithstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by 0.1%, except that, during any experience rating year in which the fund reserve ratio is equal to or greater than 7.00%, there shall be no decrease pursuant to this subparagraph (G) in the contribution of any employer who has a deficit reserve ratio of negative 35.00% or under.

(H) On or after January 1, 1993 until December 31, 1993, notwithstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by a factor of 52.0% computed to the nearest multiple of 1/10%, except that, if an employer has a deficit reserve ratio of negative 35.0% or under, the employer's rate of contribution shall not be reduced pursuant to this subparagraph (H) to less than 5.4%. The amount of the reduction in the employer contributions stipulated by this subparagraph (H) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraph (G) of this paragraph (5), except that the rate of contribution of an employer who has a deficit reserve ratio of negative 35.0% or under shall not be reduced pursuant to this subparagraph (H) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

On or after January 1, 1994 until December 31, 1995, except as provided pursuant to subparagraph (I) of this paragraph (5), not-



withstanding any other provisions of this paragraph (5), the contribution rate for each employer liable to pay contributions, as computed under subparagraph (E) of this paragraph (5), shall be decreased by a factor of 36.0% computed to the nearest multiple of 1/10%, except that, if an employer has a deficit reserve ratio of negative 35.0% or under, the employer's rate of contribution shall not be reduced pursuant to this subparagraph (H) to less than 5.4%. The amount of the reduction in the employer contributions stipulated by this subparagraph (H) shall be in addition to the amount of the reduction in the employer contributions stipulated by subparagraph (G) of this paragraph (5), except that the rate of contribution of an employer who has a deficit reserve ratio of negative 35.0% or under shall not be reduced pursuant to this subparagraph (H) to less than 5.4% and the rate of contribution of any other employer shall not be reduced to less than 0.0%.

(I) If the fund reserve ratio decreases to a level of less than 4.00% on March 31 of calendar year 1994 or calendar year 1995, the provisions of subparagraph (H) of this paragraph (5) shall cease to be in effect as of July 1 of that calendar year.

(6) Additional contributions.

Notwithstanding any other provision of law, any employer who has been assigned a contribution rate pursuant to subsection (c) of this section for the year commencing July 1, 1948, and for any year commencing July 1 thereafter, may voluntarily make payment of additional contributions, and upon such payment shall receive a recomputation of the experience rate applicable to such employer, including in the calculation the additional contribution so made. Any such additional contribution shall be made during the 30-day period following the date of the mailing to the employer of the notice of his contribution rate as prescribed in this section, unless, for good cause, the time for payment has been extended by the controller for not to exceed an additional 60 days; provided that in no event may such payments which are made later than 120 days after the beginning of the year for which such rates are effective be considered in determining the experience rate for the year in which the payment is made. Any employer receiving any extended period of time within which to make such additional payment and failing to make such payment timely shall be, in addition to the required amount of additional payment, a penalty of 5% thereof or \$5.00, whichever is greater, not to exceed \$50.00. Any adjustment under this subsection shall be made only in the form of credits against accrued or future contributions.

(7) Transfers.

(A) Upon the transfer of the organization, trade or business, or substantially all the assets of an employer to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, the controller shall transfer the employment experience of the predecessor employer to the successor in interest, including credit for past years, contributions paid, annual payrolls, benefit charges, et cetera, applicable to such predecessor employer, pursuant to regulation, if it is determined that the employment experience of the predecessor employer with respect to the organization, trade, assets or business which has been transferred may be considered indicative of the future employment experience of the successor in interest. Unless the predecessor employer was owned or controlled (by legally enforceable means or otherwise), directly or indirectly, by the successor in interest, or the predecessor employer and the successor in interest were owned or controlled (by legally enforceable means or otherwise), directly or indirectly, by the same interest or interests, the transfer of the employment experience of the predecessor shall not be effective if such successor in interest, within four months of the date of such transfer of the organization, trade, assets or business, or thereafter upon good cause shown, files a written notice protesting the transfer of the employment experience of the predecessor employer.

(B) An employer who transfers part of his or its organization, trade, assets or business to a successor in interest, whether by merger, consolidation, sale, transfer, descent or otherwise, may jointly make application with such successor in interest for transfer of that portion of the employment experience of the predecessor employer relating to the portion of the organization, trade, assets or business transferred to the successor in interest, including credit for past years, contributions paid, annual payrolls, benefit charges, et cetera, applicable to such predecessor employer. The transfer of employment experience may be allowed pursuant to regulation only if it is found that the employment experience of the predecessor employer with respect to the portion of the organization, trade, assets or business which has been transferred may be considered indicative of the future employment experience of the successor in interest. Credit shall be given to the successor in interest only for the years during which contributions were paid by the predecessor employer with respect to that part of the organization, trade, assets or business transferred.

(C) A transfer of the employment experience in whole or in part having become final, the predecessor employer thereafter shall

not be entitled to consideration for an adjusted rate based upon his or its experience or the part thereof, as the case may be, which has thus been transferred. A successor in interest to whom employment experience or a part thereof is transferred pursuant to this subsection shall, as of the date of the transfer of the organization, trade, assets or business, or part thereof, immediately become an employer if not theretofore an employer subject to this chapter (R.S.43:21-1 et seq.).

(d) Contributions of workers to the unemployment compensation fund and the State disability benefits fund.

(1) (A) For periods after January 1, 1975, each worker shall contribute to the fund 1% of his wages with respect to his employment with an employer, which occurs on and after January 1, 1975, after such employer has satisfied the condition set forth in subsection (h) of R.S.43:21-19 with respect to becoming an employer; provided, however, that such contributions shall be at the rate of 1/2 of 1% of wages paid with respect to employment while the worker is in the employ of the State of New Jersey, or any governmental entity or instrumentality which is an employer as defined under R.S.43:21-19(h)(5), or is covered by an approved private plan under the "Temporary Disability Benefits Law" or while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31).

(B) Effective January 1, 1978 there shall be no contributions by workers in the employ of any governmental or nongovernmental employer electing or required to make payments in lieu of contributions unless the employer is covered by the State plan under the "Temporary Disability Benefits Law" (C.43:21-37 et seq.), and in that case contributions shall be at the rate of 1/2 of 1%, except that commencing July 1, 1986, workers in the employ of any nongovernmental employer electing or required to make payments in lieu of contributions shall be required to make contributions to the fund at the same rate prescribed for workers of other nongovernmental employers.

(C)(i) Notwithstanding the above provisions of this paragraph (1), during the period starting July 1, 1986 and ending December 31, 1992, each worker shall contribute to the fund 1.125% of wages paid with respect to his employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under R.S.43:21-19(h)(6), regardless of whether that nonprofit organization elects or is required to

finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection R.S.43:21-19(h) with respect to becoming an employer. Contributions, however, shall be at the rate of 0.625% while the worker is covered by an approved private plan under the "Temporary Disability Benefits Law" while the worker is exempt under section 7 of that law, P.L.1948, c.110 (C.43:21-31) or any other provision of that law; provided that such contributions shall be at the rate of 0.625% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions and which is covered by the State plan under the "Temporary Disability Benefits Law," except that, while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31) or any other provision of that law, or is covered for disability benefits by an approved private plan of the employer, the contributions to the fund shall be 0.125%.

(ii) Notwithstanding the above provisions of this paragraph (1), during the period starting January 1, 1998, each worker shall contribute to the fund 0.625% of wages paid with respect to his employment with a governmental employer electing or required to pay contributions, or nongovernmental employer, including a nonprofit organization which is an employer as defined under R.S.43:21-19(h)(6), regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection R.S.43:21-19(h) with respect to becoming an employer, provided that such contributions shall be at the rate of 0.125% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

(D) Notwithstanding any other provisions of this paragraph (1), during the period starting January 1, 1993 and ending June 30, 1994, each worker shall contribute to the unemployment compensation fund 0.5% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph 6 of subsection (h) of R.S.43:21-19, regardless of

whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of R.S.43:21-19 with respect to becoming an employer. No contributions, however, shall be made by the worker while the worker is covered by an approved private plan under the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et seq.) or while the worker is exempt under section 7 of P.L.1948, c.110 (C.43:21-31) or any other provision of that law; provided that the contributions shall be at the rate of 0.50% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions and which is covered by the State plan under the "Temporary Disability Benefits Law," except that, while the worker is exempt from the provisions of the "Temporary Disability Benefits Law" under section 7 of that law, P.L.1948, c.110 (C.43:21-31) or any other provision of that law, or is covered for disability benefits by an approved private plan of the employer, no contributions shall be made to the fund.

Each worker shall, starting on January 1, 1996 and ending December 31, 1997, or, if the unemployment compensation fund reserve ratio, as determined pursuant to paragraph (5) of subsection (c) of this section, decreases to a level of less than 4.00% on March 31 of calendar year 1994 or calendar year 1995, starting on July 1 of that calendar year and ending December 31, 1997, contribute to the unemployment compensation fund 0.60% of wages paid with respect to the worker's employment with a governmental employer electing or required to pay contributions or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph 6 of subsection (h) of R.S.43:21-19, regardless of whether that nonprofit organization elects or is required to finance its benefit costs with contributions to the fund or by payments in lieu of contributions, after that employer has satisfied the conditions set forth in subsection (h) of R.S.43:21-19 with respect to becoming an employer, provided that the contributions shall be at the rate of 0.10% of wages paid with respect to employment with the State of New Jersey or any other governmental entity or instrumentality electing or required to make payments in lieu of contributions.

(E) Each employer shall, notwithstanding any provision of law in this State to the contrary, withhold in trust the amount of his

workers' contributions from their wages at the time such wages are paid, shall show such deduction on his payroll records, shall furnish such evidence thereof to his workers as the division or controller may prescribe, and shall transmit all such contributions, in addition to his own contributions, to the office of the controller in such manner and at such times as may be prescribed. If any employer fails to deduct the contributions of any of his workers at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he alone shall thereafter be liable for such contributions, and for the purpose of R.S.43:21-14, such contributions shall be treated as employer's contributions required from him.

(F) As used in this chapter (R.S.43:21-1 et seq.), except when the context clearly requires otherwise, the term "contributions" shall include the contributions of workers pursuant to this section.

(G) Each worker shall, starting on July 1, 1994, contribute to the State disability benefits fund an amount equal to 0.50% of wages paid with respect to the worker's employment with a government employer electing or required to pay contributions to the State disability benefits fund or nongovernmental employer, including a nonprofit organization which is an employer as defined under paragraph 6 of subsection (h) of R.S. 43:21-19, unless the employer is covered by an approved private disability plan or is exempt from the provisions of the "Temporary Disability Benefits Law," P.L.1948 c.110 (C.43:21-25 et seq.) under section 7 of that law (C.43:21-31) or any other provision of that law.

(2) (A) (Deleted by amendment, P.L.1984, c.24.)

(B) (Deleted by amendment, P.L.1984, c.24.)

(C) (Deleted by amendment, P.L.1994, c.112.)

(D) (Deleted by amendment, P.L.1994, c.112.)

(E) (i) (Deleted by amendment, P.L.1994, c.112.)

(ii) Notwithstanding any other provision of this paragraph (2), with respect to wages paid during the period beginning on January 1, 1993 and ending June 30, 1994, there shall be deposited in and credited to the State disability benefits fund all worker contributions received by the controller.

(iii) (Deleted by amendment, P.L.1994, c.112.)

(3) If an employee receives wages from more than one employer during any calendar year, and either the sum of his contributions deposited in and credited to the State disability benefits fund (in accordance with paragraph (2) of this subsection) plus the amount of his contributions, if any, required towards the costs

of benefits under one or more approved private plans under the provisions of section 9 of the "Temporary Disability Benefits Law" (C.43:21-33) and deducted from his wages, or the sum of such latter contributions, if the employee is covered during such calendar year only by two or more private plans, exceeds an amount equal to 1/2 of 1% of the "wages" determined in accordance with the provisions of R.S.43:21-7(b)(3) during the calendar years beginning on or after January 1, 1976, the employee shall be entitled to a refund of the excess if he makes a claim to the controller within two years after the end of the calendar year in which the wages are received with respect to which the refund is claimed and establishes his right to such refund. Such refund shall be made by the controller from the State disability benefits fund. No interest shall be allowed or paid with respect to any such refund. The controller shall, in accordance with prescribed regulations, determine the portion of the aggregate amount of such refunds made during any calendar year which is applicable to private plans for which deductions were made under section 9 of the "Temporary Disability Benefits Law," such determination to be based upon the ratio of the amount of such wages exempt from contributions to such fund, as provided in subparagraph (B) of paragraph (1) of this subsection with respect to coverage under private plans, to the total wages so exempt plus the amount of such wages subject to contributions to the disability benefits fund, as provided in subparagraph (B) of paragraph (2) of this subsection. The controller shall, in accordance with prescribed regulations, prorate the amount so determined among the applicable private plans in the proportion that the wages covered by each plan bear to the total private plan wages involved in such refunds, and shall assess against and recover from the employer, or the insurer if the insurer has indemnified the employer with respect thereto, the amount so prorated. The provisions of R.S.43:21-14 with respect to collection of employer contributions shall apply to such assessments. The amount so recovered by the controller shall be paid into the State disability benefits fund.

(4) If an individual does not receive any wages from the employing unit which for the purposes of this chapter (R.S.43:21-1 et seq.) is treated as his employer, or receives his wages from some other employing unit, such employer shall nevertheless be liable for such individual's contributions in the first instance; and after payment thereof such employer may deduct the amount of such contributions from any sums payable by him to such

employing unit, or may recover the amount of such contributions from such employing unit, or, in the absence of such an employing unit, from such individual, in a civil action; provided proceedings therefor are instituted within three months after the date on which such contributions are payable. General rules shall be prescribed whereby such an employing unit may recover the amount of such contributions from such individuals in the same manner as if it were the employer.

(5) Every employer who has elected to become an employer subject to this chapter (R.S.43:21-1 et seq.), or to cease to be an employer subject to this chapter (R.S.43:21-1 et seq.), pursuant to the provisions of R.S.43:21-8, shall post and maintain printed notices of such election on his premises, of such design, in such numbers, and at such places as the director may determine to be necessary to give notice thereof to persons in his service.

(6) Contributions by workers, payable to the controller as herein provided, shall be exempt from garnishment, attachment, execution, or any other remedy for the collection of debts.

(e) Contributions by employers to State disability benefits fund.

(1) Except as hereinafter provided, each employer shall, in addition to the contributions required by subsections (a), (b), and (c) of this section, contribute  $\frac{1}{2}$  of 1% of the wages paid by such employer to workers with respect to employment unless he is not a covered employer as defined in section 3 of the "Temporary Disability Benefits Law" (C.43:21-27 (a)), except that the rate for the State of New Jersey shall be  $\frac{1}{10}$  of 1% for the calendar year 1980 and for the first six months of 1981. Prior to July 1, 1981 and prior to July 1 each year thereafter, the controller shall review the experience accumulated in the account of the State of New Jersey and establish a rate for the next following fiscal year which, in combination with worker contributions, will produce sufficient revenue to keep the account in balance; except that the rate so established shall not be less than  $\frac{1}{10}$  of 1%. Such contributions shall become due and be paid by the employer to the controller for the State disability benefits fund as established by law, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to \$0.005 or more, in which case it shall be increased to \$0.01.

(2) During the continuance of coverage of a worker by an approved private plan of disability benefits under the "Temporary Disability Benefits Law," the employer shall be exempt from the



contributions required by subparagraph (1) above with respect to wages paid to such worker.

(3) (A) The rates of contribution as specified in subparagraph (1) above shall be subject to modification as provided herein with respect to employer contributions due on and after July 1, 1951.

(B) A separate disability benefits account shall be maintained for each employer required to contribute to the State disability benefits fund and such account shall be credited with contributions deposited in and credited to such fund with respect to employment occurring on and after January 1, 1949. Each employer's account shall be credited with all contributions paid on or before January 31 of any calendar year on his own behalf and on behalf of individuals in his service with respect to employment occurring in preceding calendar years; provided, however, that if January 31 of any calendar year falls on a Saturday or Sunday an employer's account shall be credited as of January 31 of such calendar year with all the contributions which he has paid on or before the next succeeding day which is not a Saturday or Sunday. But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him to the fund either on his own behalf or on behalf of such individuals. Benefits paid to any covered individual in accordance with Article III of the "Temporary Disability Benefits Law" on or before December 31 of any calendar year with respect to disability in such calendar year and in preceding calendar years shall be charged against the account of the employer by whom such individual was employed at the commencement of such disability or by whom he was last employed, if out of employment.

(C) The controller may prescribe regulations for the establishment, maintenance, and dissolution of joint accounts by two or more employers, and shall, in accordance with such regulations and upon application by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(D) Prior to July 1 of each calendar year, the controller shall make a preliminary determination of the rate of contribution for the 12 months commencing on such July 1 for each employer subject to the contribution requirements of this subsection (e).

(1) Such preliminary rate shall be 1/2 of 1% unless on the preceding January 31 of such year such employer shall have been a covered employer who has paid contributions to the State disabil-

ity benefits fund with respect to employment in the three calendar years immediately preceding such year.

(2) If the minimum requirements in (1) above have been fulfilled and the credited contributions exceed the benefits charged by more than \$500.00, such preliminary rate shall be as follows:

(i)  $2/10$  of 1% if such excess over \$500.00 exceeds 1% but is less than  $1\frac{1}{4}\%$  of his average annual payroll (as defined in this chapter (R.S.43:21-1 et seq.));

(ii)  $15/100$  of 1% if such excess over \$500.00 equals or exceeds  $1\frac{1}{4}\%$  but is less than  $1\frac{1}{2}\%$  of his average annual payroll;

(iii)  $1/10$  of 1% if such excess over \$500.00 equals or exceeds  $1\frac{1}{2}\%$  of his average annual payroll.

(3) If the minimum requirements in (1) above have been fulfilled and the contributions credited exceed the benefits charged but by not more than \$500.00 plus 1% of his average annual payroll, or if the benefits charged exceed the contributions credited but by not more than \$500.00, the preliminary rate shall be  $1/4$  of 1%.

(4) If the minimum requirements in (1) above have been fulfilled and the benefits charged exceed the contributions credited by more than \$500.00, such preliminary rate shall be as follows:

(i)  $35/100$  of 1% if such excess over \$500.00 is less than  $1/4$  of 1% of his average annual payroll;

(ii)  $45/100$  of 1% if such excess over \$500.00 equals or exceeds  $1/4$  of 1% but is less than  $1/2$  of 1% of his average annual payroll;

(iii)  $55/100$  of 1% if such excess over \$500.00 equals or exceeds  $1/2$  of 1% but is less than  $3/4$  of 1% of his average annual payroll;

(iv)  $65/100$  of 1% if such excess over \$500.00 equals or exceeds  $3/4$  of 1% but is less than 1% of his average annual payroll;

(v)  $75/100$  of 1% if such excess over \$500.00 equals or exceeds 1% of his average annual payroll.

(5) Determination of the preliminary rate as specified in (2), (3) and (4) above shall be subject, however, to the condition that it shall in no event be decreased by more than  $1/10$  of 1% of wages or increased by more than  $2/10$  of 1% of wages from the preliminary rate determined for the preceding year in accordance with (1), (2), (3) or (4), whichever shall have been applicable.

(E) (1) Prior to July 1 of each calendar year the controller shall determine the amount of the State disability benefits fund as of December 31 of the preceding calendar year, increased by the contributions paid thereto during January of the current calendar year with respect to employment occurring in the preceding calendar year. If such amount exceeds the net amount withdrawn

from the unemployment trust fund pursuant to section 23 of the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-47) plus the amount at the end of such preceding calendar year of the unemployment disability account (as defined in section 22 of said law (C.43:21-46)), such excess shall be expressed as a percentage of the wages on which contributions were paid to the State disability benefits fund on or before January 31 with respect to employment in the preceding calendar year.

(2) The controller shall then make a final determination of the rates of contribution for the 12 months commencing July 1 of such year for employers whose preliminary rates are determined as provided in (D) hereof, as follows:

(i) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds  $1\frac{1}{4}\%$ , the final employer rates shall be the preliminary rates determined as provided in (D) hereof, except that if the employer's preliminary rate is determined as provided in (D)(2) or (D)(3) hereof, the final employer rate shall be the preliminary employer rate decreased by such percentage of excess taken to the nearest  $\frac{5}{100}$  of 1%, but in no case shall such final rate be less than  $\frac{1}{10}$  of 1%.

(ii) If the percentage determined in accordance with paragraph (E)(1) of this subsection equals or exceeds  $\frac{3}{4}$  of 1% and is less than  $1\frac{1}{4}$  of 1%, the final employer rates shall be the preliminary employer rates.

(iii) If the percentage determined in accordance with paragraph (E)(1) of this subsection is less than  $\frac{3}{4}$  of 1%, but in excess of  $\frac{1}{4}$  of 1%, the final employer rates shall be the preliminary employer rates determined as provided in (D) hereof increased by the difference between  $\frac{3}{4}$  of 1% and such percentage taken to the nearest  $\frac{5}{100}$  of 1%; provided, however, that no such final rate shall be more than  $\frac{1}{4}$  of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof, more than  $\frac{1}{2}$  of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and (D)(3) hereof, nor more than  $\frac{3}{4}$  of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof.

(iv) If the amount of the State disability benefits fund determined as provided in paragraph (E)(1) of this subsection is equal to or less than  $\frac{1}{4}$  of 1%, then the final rate shall be  $\frac{2}{5}$  of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(2) hereof,  $\frac{7}{10}$  of 1% in the case of an employer whose preliminary rate is determined as provided in (D)(1) and

(D)(3) hereof, and 1.1% in the case of an employer whose preliminary rate is determined as provided in (D)(4) hereof. Notwithstanding any other provision of law or any determination made by the controller with respect to any 12-month period commencing on July 1, 1970, the final rates for all employers for the period beginning January 1, 1971, shall be as set forth herein.

2. 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 or the State disability benefits 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; or

(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;

(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 State-wide 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 commencing 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.

3. Section 22 of P.L.1948, c.110 (C.43:21-46) is amended to read as follows:

**C.43:21-46 State disability benefits fund.**

22. State disability benefits fund. (a) The State disability benefits fund, hereinafter referred to as the fund, is hereby established. The fund shall remain in the custody of the State Treasurer, and to the extent of its cash requirements shall be deposited in authorized public depositories in the State of New Jersey. There shall be deposited in and credited to the fund the amount of worker and employer contributions provided under subparagraph (G) of paragraph (1) of subsection (d) of R.S.43:21-7 and subsection (e) of R.S.43:21-7, less refunds authorized by the chapter (R.S.43:21-1 et seq.) to which this act is a supplement, and the entire amount of interest and earnings from investments of the fund, and all assessments, fines and penalties collected under this act. The fund shall be held in trust for the payment of disability benefits pursuant to this act, for the payment of benefits pursuant to subsection (f) of R.S. 43:21-4, and for the payment of any authorized refunds of contributions. All warrants for the payment of benefits shall be issued by and bear only the signature of the Director of the Division of Unemployment and Temporary Disability Insurance or his duly authorized agent for that purpose. All other moneys withdrawn from the fund shall be upon warrant signed by the State Treasurer and countersigned by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey. The Treasurer shall maintain books, records and accounts for the fund, appoint personnel and fix their compensation within the limits of available appropriations. The expenses of the Treasurer in administering the fund and its accounts shall be charged against the administration account, as hereinafter

established. A separate account, to be known as the administration account, shall be maintained in the fund, and there shall be credited to such account an amount determined to be sufficient for proper administration, not to exceed, however, 1/10 of 1% of the wages with respect to which current contributions are payable into the fund, and the entire amount of any assessments against covered employers, as hereinafter provided, for costs of administration prorated among approved private plans. The costs of administration of this act, including R.S.43:21-4(f), shall be charged to the administration account.

(b) A further separate account, to be known as the unemployment disability account, shall be maintained in the fund. Such account shall be charged with all benefit payments under R.S.43:21-4(f).

Prior to July 1 of each calendar year, the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey shall determine the average rate of interest and other earnings on all investments of the State disability benefits fund for the preceding calendar year. An amount equal to the sum of the amounts withdrawn from the unemployment trust fund pursuant to section 23 hereof multiplied by such average rate shall be determined by the division and credited to the unemployment disability account as of the end of the preceding calendar year.

If the unemployment disability account shall show an accumulated deficit in excess of \$200,000.00 at the end of any calendar year after interest and other earnings have been credited as provided hereinabove, the division shall determine the ratio of such deficit to the total of all taxable wages paid during the preceding calendar year, and shall make an assessment against all employers in an amount equal to the taxable wages paid by them during such preceding calendar year to employees, multiplied by such ratio, but in no event shall any such assessment exceed 1/10 or 1% of such wages; provided, however, that the assessment made against the State (including Rutgers, The State University, the University of Medicine and Dentistry of New Jersey and the New Jersey Institute of Technology) shall not exceed the sum of all benefits paid under the provisions of R.S.43:21-4(f) as the result of employment with the State. Such amounts shall be collectible by the division in the same manner as provided for the collection of employee contributions under this chapter (R.S.43:21-1 et seq.). In making this assessment, the division shall furnish to each affected employer a brief summary of the determination thereof. The amount of such assessments collected by the division shall be credited to the unemployment disability account.

As used in this section, "taxable wages" shall mean wages with respect to which employer contributions have been paid or are payable pursuant to subsections (a), (b) and (c) of R.S.43:21-7.

(c) A board of trustees, consisting of the State Treasurer, the Secretary of State, the Commissioner of Labor and Industry, the director of the division, and the State Comptroller, is hereby created. The board shall invest and reinvest all moneys in the fund in excess of its cash requirements, and such investments shall be made in obligations legal for savings banks; provided, however, that the provisions of this subsection shall in all respects be subject to the provisions of P.L.1950, c.270 (C.52:18A-79 et seq.).

(d) There is hereby appropriated, to be paid out of the fund, such amounts as may from time to time be required for the payment of disability benefits, and such amounts as may be required each year, as contained in the annual appropriation act, for the administration of this act, including R.S.43:21-4(f).

4. Section 23 of P.L.1948, c.110 (C.43:21-47) is amended to read as follows:

**C.43:21-47 Withdrawal from Federal Treasury.**

23. Withdrawal from Federal Treasury. (a) The State Treasurer is hereby authorized and directed to requisition and withdraw on or before December 31, 1948, the sum of \$50,000,000.00 from the amount of worker contributions heretofore accumulated in the State unemployment compensation fund and deposited in and credited to the account of this State in the unemployment trust fund of the United States of America, established and maintained pursuant to section 904 of the Social Security Act, as amended (42 U.S.C. §1104), and to deposit such sums in the State disability benefits fund, established under the "Temporary Disability Benefits Law." The State Treasurer is further authorized and empowered to make such requisitions or withdrawals in accordance with such regulations relating thereto as may be prescribed by the United States Secretary of the Treasury. No portion of the amount requisitioned or withdrawn from the Federal Treasury shall be expended for the purpose of administering the "Temporary Disability Benefits Law."

(b) The State Treasurer is hereby authorized and directed to requisition and withdraw within 90 days of this enactment, an additional sum of \$50,000,000.00 from the amount of worker contributions heretofore accumulated in the State unemployment compensation fund and deposited in and credited to the account of this State in the unemployment trust fund of the United States of America,



established and maintained pursuant to section 904 of the Social Security Act, as amended (42 U.S.C. § 1104), and to deposit such sums in the State disability benefits fund, established under the "Temporary Disability Benefits Law." The State Treasurer is further authorized and empowered to make such requisitions or withdrawals in accordance with such regulations relating thereto as may be prescribed by the United States Secretary of the Treasury. If the balance in the State disability benefits fund as of December 31 of any calendar year, increased by the contributions credited thereto on or before, or as of January 31 immediately thereafter is in excess of \$75,000,000.00, the excess shall be withdrawn from the State disability benefits fund and deposited to the account of this State in the unemployment trust fund until the entire \$50,000,000.00 requisitioned and withdrawn under this subsection (b) has been returned and deposited to the account of this State in the unemployment trust fund pursuant to the provisions of this subsection (b) and subsection (c) hereof. Such repayment to the unemployment trust fund shall be considered in determining contribution rates by employers to the State disability benefits fund under R.S.43:21-7(c). No portion of the amount requisitioned or withdrawn from the Federal Treasury shall be expended for the purpose of administering the "Temporary Disability Benefits Law."

(c) The State Treasurer shall transfer from the State disability benefits fund to the clearing account of the unemployment compensation fund, as established under R.S.43:21-9, the sum of \$25,000,000.00. Such transfer may be made at such times and in such installments as the State Treasurer may deem proper, except that the total sum shall have been transferred by no later than April 30, 1971. Amounts transferred to the clearing account of the unemployment compensation fund under this subsection shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America in accordance with the provisions of R.S.43:21-9(b).

(d) The State Treasurer is hereby authorized and directed to requisition and withdraw on or before December 31, 1985 a minimum of \$50,000,000.00, at the discretion of the Commissioner of Labor, from the State disability benefits fund established under section 22 of P.L.1948, c.110 (C.43:21-46) and to deposit such sum in the clearing account of the State unemployment compensation fund established under R.S.43:21-9. The amount transferred under this subsection (d) shall be cleared immediately and shall be deposited with the Secretary of the Treasury of the United States of America, in accordance with the provisions of R.S.43:21-9(b).

(e) The State Treasurer is hereby authorized and directed to requisition and withdraw on or after July 1, 1992 an amount not greater than \$25,000,000 from revenues received pursuant to paragraph (1) of subsection (e) of R.S.43:21-7, at the discretion of the Commissioner of Labor, from the State disability benefits fund established pursuant to section 22 of P.L.1948, c.110 (C.43:21-46) and to deposit that amount in the New Jersey Workforce Development Partnership Fund created pursuant to section 9 of P.L.1992, c.43 (C.34:15D-9).

(f) The State Treasurer, in consultation with the Commissioner of Labor, is hereby authorized and directed to requisition and withdraw on or after July 1, 1994 from revenues received pursuant to paragraph (1) of subsection (e) of R.S.43:21-7, an amount from the State disability benefits fund not greater than 25% of the balance in that fund as of June 30, 1994 and to deposit that amount in the clearing account of the unemployment compensation fund established under R.S.43:21-9. The amount transferred under this subsection (f) shall be cleared immediately and shall be deposited with the Secretary of the Treasury of United States of America, in accordance with the provisions of R.S.43:21-9(b).

(g) To the extent that funds from the General Fund are also deposited into the clearing account subsequent to July 1, 1994 but before October 2, 1994, such amount shall be reimbursed to the General Fund from amounts collected pursuant to R.S.43:21-7(d)(1)(G) and R.S.43:21-7(e) for quarterly periods ending on or after September 30, 1994.

(h) The amount transferred from the State disability benefits fund to the clearing account of the unemployment compensation fund under subsection (f) of this section plus any amount reimbursed to the General Fund in accordance with subsection (g) shall be repaid to the State disability benefits fund from general state revenues with interest at the rate earned by the investments made with moneys remaining in the State disability benefits fund. The repayment period shall not exceed ten years. The amount repaid each year shall be not less than one tenth of the total amount transferred from the State disability benefits fund to the clearing account of the unemployment compensation fund under subsection (f) of this section, plus not less than one tenth of the amount reimbursed to the General Fund in accordance with subsection (g), plus accrued interest. The State Treasurer shall, on or before the thirty-first day of January in 1995 and in each subsequent year determine what amount shall be repaid to the State disability benefits fund in the next commencing fiscal year, which amount

shall be consistent with the provisions of this subsection (h). The Legislature shall appropriate that amount from the General Fund to the State disability benefits fund. For purposes of determining the balance in the State disability benefits fund as prescribed pursuant to subparagraph (1) of subparagraph (E) of paragraph (3) of subsection (e) of R.S.43:21-7, the amount transferred from the State disability benefits fund to the unemployment compensation fund pursuant to subsection (f) of this section and reimbursed to the General Fund pursuant to subsection (g) of this section less repayments or other reductions, plus accrued interest shall be included therein.

**Repealer.**

5. Section 46 of P.L.1994, c.67, the Fiscal Year 1995 annual appropriations act, is repealed.

6. This act shall take effect immediately.

Approved September 29, 1994.

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CHAPTER 113

AN ACT concerning the Administrative Office of the Courts 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:12-13 Child of incarcerated person; care ensured; guideline development by Administrative Director of the Courts.**

1. a. The Administrative Director of the Courts, in consultation with the Governor's Task Force on Child Abuse and Neglect, shall develop and recommend to the Chief Justice of the Supreme Court, no later than the 120th day after the effective date of this act, guidelines for each judge of the Superior Court and each municipal court judge to follow in order to ensure that appropriate arrangements are made for the care of an incarcerated person's child by a responsible adult. The Chief Justice shall provide for implementation of these guidelines as soon as is practicable after the date of receipt of the recommended guidelines.

b. The administrative director, in consultation with the Governor's Task Force on Child Abuse and Neglect, shall periodically review the guidelines adopted pursuant to subsection a. of this section and recommend to the Chief Justice such revisions as are

deemed necessary. The Chief Justice shall provide for implementation of the revised guidelines as soon as is practicable after the date of receipt of the recommended revisions.

2. This act shall take effect immediately.

Approved October 12, 1994.

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#### CHAPTER 114

AN ACT concerning commercial transactions, enacting Chapters 2A and 4A of Title 12A of the New Jersey Statutes, amending various parts of the statutory law and repealing Chapter 6 of Title 12A of the New Jersey Statutes and N.J.S.12A:9-111.

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

1.

#### TITLE 12A CHAPTER 2A LEASES

##### SUBCHAPTER 1. GENERAL PROVISIONS

- 12A:2A-101. Short title.
- 12A:2A-102. Scope.
- 12A:2A-103. Definitions and index of definitions.
- 12A:2A-104. Leases subject to other law.
- 12A:2A-105. Territorial application of chapter to goods covered by certificate of title.
- 12A:2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.
- 12A:2A-107. Waiver or renunciation of claim or right after default.
- 12A:2A-108. Unconscionability.
- 12A:2A-109. Option to accelerate at will.

##### SUBCHAPTER 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

- 12A:2A-201. Statute of frauds.
- 12A:2A-202. Final written expression: parol or extrinsic evidence.
- 12A:2A-203. Seals inoperative.
- 12A:2A-204. Formation in general.
- 12A:2A-205. Firm offers.

- 12A:2A-206. Offer and acceptance in formation of lease contract.
- 12A:2A-207. Course of performance or practical construction.
- 12A:2A-208. Modification, rescission and waiver.
- 12A:2A-209. Lessee under finance lease as beneficiary of supply contract.
- 12A:2A-210. Express warranties.
- 12A:2A-211. Warranties against interference and against infringement; lessee's obligation against infringement.
- 12A:2A-212. Implied warranty of merchantability.
- 12A:2A-213. Implied warranty of fitness for particular purpose.
- 12A:2A-214. Exclusion or modification of warranties.
- 12A:2A-215. Cumulation and conflict of warranties express or implied.
- 12A:2A-216. Third-party beneficiaries of express and implied warranties.
- 12A:2A-217. Identification.
- 12A:2A-218. Insurance and proceeds.
- 12A:2A-219. Risk of loss.
- 12A:2A-220. Effect of default on risk of loss.
- 12A:2A-221. Casualty to identified goods.

#### SUBCHAPTER 3. EFFECT OF LEASE CONTRACT

- 12A:2A-301. Enforceability of lease contract.
- 12A:2A-302. Title to and possession of goods.
- 12A:2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.
- 12A:2A-304. Subsequent lease of goods by lessor.
- 12A:2A-305. Sale or sublease of goods by lessee.
- 12A:2A-306. Priority of certain liens arising by operation of law.
- 12A:2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.
- 12A:2A-308. Special rights of creditors.
- 12A:2A-309. Lessor's and lessee's rights when goods become fixtures.
- 12A:2A-310. Lessor's and lessee's rights when goods become accessions.
- 12A:2A-311. Priority subject to subordination.

#### SUBCHAPTER 4. PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND EXCUSED

- 12A:2A-401. Insecurity: adequate assurance of performance.

- 12A:2A-402. Anticipatory repudiation.
- 12A:2A-403. Retraction of anticipatory repudiation.
- 12A:2A-404. Substituted performance.
- 12A:2A-405. Excused performance.
- 12A:2A-406. Procedure on excused performance.
- 12A:2A-407. Irrevocable promises: finance leases.

#### SUBCHAPTER 5. DEFAULT

##### A. IN GENERAL

- 12A:2A-501. Default: procedure.
- 12A:2A-502. Notice after default.
- 12A:2A-503. Modification or impairment of rights and remedies.
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- 12A:2A-505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.
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##### B. DEFAULT BY LESSOR

- 12A:2A-508. Lessee's remedies.
- 12A:2A-509. Lessee's rights on improper delivery; rightful rejection.
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- 12A:2A-517. Revocation of acceptance of goods.
- 12A:2A-518. Cover; substitute goods.
- 12A:2A-519. Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.
- 12A:2A-520. Lessee's incidental and consequential damages.
- 12A:2A-521. Lessee's right to specific performance or replevin.
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##### C. DEFAULT BY LESSEE

- 12A:2A-523. Lessor's remedies.
- 12A:2A-524. Lessor's right to identify goods to lease contract.

- 12A:2A-525. Lessor's right to possession of goods.
- 12A:2A-526. Lessor's stoppage of delivery in transit or otherwise.
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- 12A:2A-532. Lessor's rights to residual interest.

### SUBCHAPTER 1. GENERAL PROVISIONS

#### Short title.

12A:2A-101. Short title.

This chapter shall be known and may be cited as the "Uniform Commercial Code - Leases."

#### Scope.

12A:2A-102. Scope.

This chapter applies to any transaction, regardless of form, that creates a lease.

#### Definitions and index of definitions.

12A:2A-103. Definitions and index of definitions.

(1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is a natural person and who takes under the lease primarily for a personal, family, or household purpose.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;  
(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.



(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (12A:2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions" 12A:2A-310(1).

"Construction mortgage" 12A:2A-309(1)(d).

"Encumbrance" 12A:2A-309(1)(e).

"Fixtures" 12A:2A-309(1)(a).

"Fixture filing" 12A:2A-309(1)(b).

"Purchase money lease" 12A:2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

"Account" 12A:9-106.

"Between merchants" 12A:2-104(3).

"Buyer" 12A:2-103(1)(a).

"Chattel paper" 12A:9-105(1)(b).

"Consumer goods" 12A:9-109(1).

"Document" 12A:9-105(1)(f).

"Entrusting" 12A:2-403(3).

"General intangibles" 12A:9-106.

"Good faith" 12A:2-103(1)(b).

"Instrument" 12A:9-105(1)(i).

"Merchant" 12A:2-104(1).

"Mortgage" 12A:9-105(1)(j).

"Pursuant to commitment" 12A:9-105(1)(k).

"Receipt" 12A:2-103(1)(c).

"Sale" 12A:2-106(1).

"Sale on approval" 12A:2-326.

"Sale or return" 12A:2-326.

"Seller" 12A:2-103(1)(d).

(4) In addition chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**Leases subject to other law.**

12A:2A-104. Leases subject to other law.

(1) A lease, although subject to this chapter, is also subject to any applicable:

(a) certificate of title statute of this State:

R.S.39:10-1 to R.S.39:10-9 both inclusive;

P.L.1971, c.311 (C.39:10-9.1 and C.39:10-9.2);

R.S.39:10-10 to R.S.39:10-16 both inclusive;

R.S.39:10-18 to R.S.39:10-25 both inclusive;

P.L.1984, c.152 (C.12:7A-1 to C.12:7A-29 both inclusive);

(b) certificate of title statute of another jurisdiction (12A:2A-105); or

(c) consumer law of this State, both decisional and statutory.

(2) In case of conflict between the provisions of this chapter, other than sections 12A:2A-105, 12A:2A-304(3), and 12A:2A-305(3), and any law referred to in subsection (1), the provisions of that law control.

(3) Failure to comply with an applicable law has only the effect specified therein.

**Territorial application of chapter to goods covered by certificate of title.**

12A:2A-105. Territorial application of chapter to goods covered by certificate of title.

Subject to the provisions of sections 12A:2A-304(3) and 12A:2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

**Limitation on power of parties to consumer lease to choose applicable law and judicial forum.**

12A:2A-106. Limitation on power of parties to consumer lease to choose applicable law and judicial forum.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, or if the goods are to be used in more than one jurisdiction none of which is the residence of the lessee, in which the lease is executed by the lessee, the choice is not enforceable.

(2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

**Waiver or renunciation of claim or right after default.**

12A:2A-107. Waiver or renunciation of claim or right after default.

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

**Unconscionability.**

12A:2A-108. Unconscionability.

(1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(3) Before making a finding of unconscionability under subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action the lessee knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

**Option to accelerate at will.**

12A:2A-109. Option to accelerate at will.

(1) A term providing that one party or the party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems himself or herself insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

## SUBCHAPTER 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

**Statute of frauds.**

12A:2A-201. Statute of frauds.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

(a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

**Final written expression: parol or extrinsic evidence.**

12A:2A-202. Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by

evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by course of dealing or usage of trade or by course of performance; and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**Seals inoperative.**

12A:2A-203. Seals inoperative.

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**Formation in general.**

12A:2A-204. Formation in general.

(1) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(3) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

**Firm offers.**

12A:2A-205. Firm offers.

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**Offer and acceptance in formation of lease contract.**

12A:2A-206. Offer and acceptance in formation of lease contract.

(1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

**Course of performance or practical construction.**

12A:2A-207. Course of performance or practical construction.

(1) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of 12A:2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

**Modification, rescission and waiver.**

12A:2A-208. Modification, rescission and waiver.

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

**Lessee under finance lease as beneficiary of supply contract.**

12A:2A-209. Lessee under finance lease as beneficiary of supply contract.

(1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied,



including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (12A:2A-209(1)) does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

**Express warranties.**

**12A:2A-210. Express warranties.**

(1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(c) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warranty" or "guarantee," or that the lessor have a specific intention to make a warranty, but

an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

**Warranties against interference and against infringement; lessee's obligation against infringement.**

**12A:2A-211. Warranties against interference and against infringement; lessee's obligation against infringement.**

(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

**Implied warranty of merchantability.**

**12A:2A-212. Implied warranty of merchantability.**

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the description in the lease agreement;

(b) in the case of fungible goods, are of fair average quality within the description;

(c) are fit for the ordinary purposes for which goods of that type are used;

(d) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(e) are adequately contained, packaged, and labeled as the lease agreement may require; and

(f) conform to any promises or affirmations of fact made on the container or label.

(3) Other implied warranties may arise from course of dealing or usage of trade.

**Implied warranty of fitness for particular purpose.**

12A:2A-213. Implied warranty of fitness for particular purpose.

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

**Exclusion or modification of warranties.**

12A:2A-214. Exclusion or modification of warranties.

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of 12A:2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".

(3) Notwithstanding subsection (2), but subject to subsection (4),

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (12A:2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing,

or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

**Cumulation and conflict of warranties express or implied.**

12A:2A-215. Cumulation and conflict of warranties express or implied.

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

- (1) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (2) A sample from an existing bulk displaces inconsistent general language of description.
- (3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

**Third-party beneficiaries of express and implied warranties.**

12A:2A-216. Third-party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a lessee under this chapter, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that the person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

**Identification.**

12A:2A-217. Identification.

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

- (1) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;
- (2) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if

the lease contract is for a lease of goods that are not existing and identified; or

(3) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

**Insurance and proceeds.**

12A:2A-218. Insurance and proceeds.

(1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

(4) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

**Risk of loss.**

12A:2A-219. Risk of loss.

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this chapter on the effect of default on risk of loss (12A:2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

**Effect of default on risk of loss.**

12A:2A-220. Effect of default on risk of loss.

(1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in the lessee's effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in the lessor's or supplier's effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

**Casualty to identified goods.**

12A:2A-221. Casualty to identified goods.

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or 12A:2A-219, then:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

**SUBCHAPTER 3. EFFECT OF LEASE CONTRACT****Enforceability of lease contract.****12A:2A-301. Enforceability of lease contract.**

Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

**Title to and possession of goods.****12A:2A-302. Title to and possession of goods.**

Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

**Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.**

**12A:2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.**

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Chapter 9, Secured Transactions, by reason of section 12A:9-102(1)(b).

(2) Except as provided in subsections (3) and (4), a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the

lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5).

(5) Subject to subsections (3) and (4):

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in 12A:2A-501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(6) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.



(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

**Subsequent lease of goods by lessor.**

**12A:2A-304. Subsequent lease of goods by lessor.**

(1) Subject to 12A:2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and 12A:2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through theft under the criminal law.

(2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**Sale or sublease of goods by lessee.**

**12A:2A-305. Sale or sublease of goods by lessee.**

(1) Subject to the provisions of 12A:2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold

interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and 12A:2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

- (a) the lessor was deceived as to the identity of the lessee;
- (b) the delivery was in exchange for a check which is later dishonored; or
- (c) the delivery was procured through theft under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this State or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**Priority of certain liens arising by operation of law.**

12A:2A-306. Priority of certain liens arising by operation of law.

If a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

**Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.**

12A:2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

(1) Except as otherwise provided in 12A:2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) and in sections 12A:2A-306 and 12A:2A-308, a creditor of a lessor takes subject to the lease contract unless:

(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;

(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(c) the creditor holds a security interest in the goods which was perfected (12A:9-303) before the lease contract became enforceable.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (12A:9-303) and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

**Special rights of creditors.**

**12A:2A-308. Special rights of creditors.**

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this chapter would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

**Lessor's and lessee's rights when goods become fixtures.**

12A:2A-309. Lessor's and lessee's rights when goods become fixtures.

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of 12A:9-402(5);

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee shall reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the

real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on Secured Transactions (chapter 9).

**Lessor's and lessee's rights when goods become accessions.**

12A:2A-310. Lessor's and lessee's rights when goods become accessions.

(1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of the interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter, or (b) if necessary to enforce the lessor's or lessee's other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but

the lessor or lessee shall reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

**Priority subject to subordination.**

12A:2A-311. Priority subject to subordination.

Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

**SUBCHAPTER 4. PERFORMANCE OF LEASE CONTRACT:  
REPUDIATED, SUBSTITUTED AND EXCUSED**

**Insecurity: adequate assurance of performance.**

12A:2A-401. Insecurity: adequate assurance of performance.

(1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which the insecure party has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(5) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

**Anticipatory repudiation.**

12A:2A-402. Anticipatory repudiation.

If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(2) make demand pursuant to 12A:2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy upon default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (12A:2A-524).

**Retraction of anticipatory repudiation.**

**12A:2A-403. Retraction of anticipatory repudiation.**

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under 12A:2A-401.

(3) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

**Substituted performance.**

**12A:2A-404. Substituted performance.**

(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and



(b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

**Excused performance.**

12A:2A-405. Excused performance.

Subject to 12A:2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with subsections (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in subsection (1) affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among the lessor's or supplier's customers but at the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as the lessor's or supplier's own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under subsection (2), of the estimated quota thus made available for the lessee.

**Procedure on excused performance.**

12A:2A-406. Procedure on excused performance.

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under 12A:2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (12A:2A-510):

(a) terminate the lease contract (12A:2A-505(2)); or

(b) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the

balance of the lease term for the deficiency but without further right against the lessor.

(2) If, after receipt of a notification from the lessor under 12A:2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

**Irrevocable promises: finance leases.**

12A:2A-407. Irrevocable promises: finance leases.

(1) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.

(2) A promise that has become irrevocable and independent under subsection (1):

(a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and

(b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

**SUBCHAPTER 5. DEFAULT.**

**A. IN GENERAL**

**Default: procedure.**

12A:2A-501. Default: procedure.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(4) Except as otherwise provided in 12A:1-106(1) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this subchapter as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this subchapter does not apply.

**Notice after default.**

12A:2A-502. Notice after default.

Except as otherwise provided in this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

**Modification or impairment of rights and remedies.**

12A:2A-503. Modification or impairment of rights and remedies.

(1) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter.

(2) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this chapter.

(3) Consequential damages may be liquidated under 12A:2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

**Liquidation of damages.**

12A:2A-504. Liquidation of damages.

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and this provision does not comply with subsection (1), or this provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (12A:2A-525 or 12A:2A-526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of that amount or \$500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this chapter other than subsection (1); and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

**Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.**

12A:2A-505. Cancellation and termination and effect of cancellation, termination, rescission, or fraud on rights and remedies.

(1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the cancelling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

**Statute of limitations.****12A:2A-506. Statute of limitations.**

(1) An action for default under a lease contract, including breach of warranty or indemnity, shall be commenced within 4 years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations and it does not apply to causes of action that have accrued before this chapter becomes effective.

**Proof of market rent: time and place.****12A:2A-507. Proof of market rent: time and place.**

(1) Damages based on market rent (12A:2A-519 or 12A:2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in sections 12A:2A-519 and 12A:2A-528.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this chapter

offered by one party is not admissible unless and until that party has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

#### B. DEFAULT BY LESSOR

##### **Lessee's remedies.**

12A:2A-508. Lessee's remedies.

(1) If a lessor fails to deliver the goods in conformity to the lease contract (12A:2A-509) or repudiates the lease contract (12A:2A-402), or a lessee rightfully rejects the goods (12A:2A-509) or justifiably revokes acceptance of the goods (12A:2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (12A:2A-510), the lessor is in default under the lease contract and the lessee may:

- (a) cancel the lease contract (12A:2A-505(1));
- (b) recover so much of the rent and security as has been paid and is just under the circumstances;
- (c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 12A:2A-518 and 12A:2A-520), or recover damages for nondelivery (sections 12A:2A-519 and 12A:2A-520);
- (d) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

- (a) if the goods have been identified, recover them (12A:2A-522); or
- (b) in a proper case, obtain specific performance or replevy the goods (12A:2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in 12A:2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (12A:2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to 12A:2A-527(5).

(6) Subject to the provisions of 12A:2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

**Lessee's rights on improper delivery; rightful rejection.**

12A:2A-509. Lessee's rights on improper delivery; rightful rejection.

(1) Subject to the provisions of 12A:2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

**Installment lease contracts: rejection and default.**

12A:2A-510. Installment lease contracts: rejection and default.

(1) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee shall accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

**Merchant lessee's duties as to rightfully rejected goods.**

**12A:2A-511.** Merchant lessee's duties as to rightfully rejected goods.

(1) Subject to any security interest of a lessee (12A:2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the merchant lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee (12A:2A-512) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

(3) In complying with this section or 12A:2A-512, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion or the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or 12A:2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

**Lessee's duties as to rightfully rejected goods.**

**12A:2A-512.** Lessee's duties as to rightfully rejected goods.

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (12A:2A-511) and subject to any security interest of a lessee (12A:2A-508(5)):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonal notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for



the lessor's or the supplier's account with reimbursement in the manner provided in 12A:2A-511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

**Cure by lessor of improper tender or delivery; replacement.**

12A:2A-513. Cure by lessor of improper tender or delivery; replacement.

(1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or supplier seasonably notifies the lessee.

**Waiver of lessee's objections.**

12A:2A-514. Waiver of lessee's objections.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (12A:2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

**Acceptance of goods.**

12A:2A-515. Acceptance of goods.

(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods (12A:2A-509(2)).

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

**Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.**

12A:2A-516. Effect of acceptance of goods; notice of default; burden of establishing default after acceptance; notice of claim or litigation to person answerable over.

(1) A lessee shall pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (12A:2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the

two litigations, then unless the person notified after reasonable receipt of the notice does come in and defend that person is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (12A:2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (12A:2A-211).

**Revocation of acceptance of goods.**

12A:2A-517. Revocation of acceptance of goods.

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(4) Revocation of acceptance shall occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(5) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

**Cover; substitute goods.**

12A:2A-518. Cover; substitute goods.

(1) After a default by a lessor under the lease contract of the type described in 12A:2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (12A:2A-504) or otherwise determined pursuant to agreement of the parties (sections 12A:1-102(3) and 12A:2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and 12A:2A-519 governs.

**Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.**

12A:2A-519. Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (12A:2A-504) or otherwise determined pursuant to agreement of the parties (sections 12A:1-102(3) and 12A:2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under 12A:2A-518(2), or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (12A:2A-516(3)), the measure of damages for non-conforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

**Lessee's incidental and consequential damages.**

12A:2A-520. Lessee's incidental and consequential damages.

(1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

(a) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

**Lessee's right to specific performance or replevin.**

12A:2A-521. Lessee's right to specific performance or replevin.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

**Lessee's right to goods on lessor's insolvency.**

12A:2A-522. Lessee's right to goods on lessor's insolvency.

(1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (12A:2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

### C. DEFAULT BY LESSEE

**Lessor's remedies.**

12A:2A-523. Lessor's remedies.

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (12A:2A-510), the lessee is in default under the lease contract and the lessor may:

- (a) cancel the lease contract (12A:2A-505(1));
- (b) proceed respecting goods not identified to the lease contract (12A:2A-524);
- (c) withhold delivery of the goods and take possession of goods previously delivered (12A:2A-525);
- (d) stop delivery of the goods by any bailee (12A:2A-526);
- (e) dispose of the goods and recover damages (12A:2A-527), or retain the goods and recover damages (12A:2A-528), or in a proper case recover rent (12A:2A-529);
- (f) exercise any other rights or pursue any other remedies provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from

the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsections (1) or (2); or

(b) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

**Lessor's right to identify goods to lease contract.**

12A:2A-524. Lessor's right to identify goods to lease contract.

(1) After default by the lessee under the lease contract of the type described in 12A:2A-523(1) or 12A:2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor may:

(a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(b) dispose of goods (12A:2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

**Lessor's right to possession of goods.**

12A:2A-525. Lessor's right to possession of goods.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in 12A:2A-523(1) or 12A:2A-523(3)(a) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the les-

sor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (12A:2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

**Lessor's stoppage of delivery in transit or otherwise.**

12A:2A-526. Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

- (a) receipt of the goods by the lessee;
- (b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

**Lessor's rights to dispose of goods.**

12A:2A-527. Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in 12A:2A-523(1) or 12A:2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (12A:2A-525 or 12A:2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (12A:2A-504) or otherwise



determined pursuant to agreement of the parties (sections 12A:1-102(3) and 12A:2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under 12A:2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and 12A:2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (12A:2A-508(5)).

**Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.**

12A:2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (12A:2A-504) or otherwise determined pursuant to agreement of the parties (sections 12A:1-102(3) and 12A:2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under 12A:2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in 12A:2A-523(1) or 12A:2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of

default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under 12A:2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under 12A:2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**Lessor's action for the rent.**

**12A:2A-529. Lessor's action for the rent.**

(1) After default by the lessee under the lease contract of the type described in 12A:2A-523(1) or 12A:2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (12A:2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under 12A:2A-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under 12A:2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by 12A:2A-527 or 12A:2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to 12A:2A-527 or 12A:2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(5) After default by the lessee under the lease contract of the type described in 12A:2A-523(1) or 12A:2A-523(3)(a) or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under 12A:2A-527 or 12A:2A-528.

**Lessor's incidental damages.**

12A:2A-530. Lessor's incidental damages.

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

**Standing to sue third parties for injury to goods.**

12A:2A-531. Standing to sue third parties for injury to goods.

(1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

- (i) has a security interest in the goods;
- (ii) has an insurable interest in the goods; or
- (iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, the suit or settlement of the party plaintiff, subject to the party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

**Lessor's rights to residual interest.**

12A:2A-532. Lessor's rights to residual interest.

In addition to any other recovery permitted by this chapter or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

2.

TITLE 12A  
CHAPTER 4A  
FUNDS TRANSFERS

SUBCHAPTER 1. SUBJECT MATTER AND DEFINITIONS

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12A:4A-507.Choice of law.

### **SUBCHAPTER 1. SUBJECT MATTER AND DEFINITIONS**

#### **Short title.**

12A:4A-101. Short title.

This chapter shall be known and may be cited as the “Uniform Commercial Code--Funds Transfers.”

#### **Subject matter.**

12A:4A-102. Subject matter.

Except as otherwise provided in section 12A:4A-108, this chapter applies to funds transfers defined in section 12A:4A-104.

#### **Payment order - definitions.**

12A:4A-103. Payment order - definitions.

(1) In this chapter:

(a) “Payment order” means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(b) “Beneficiary” means the person to be paid by the beneficiary’s bank.

(c) “Beneficiary’s bank” means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(d) “Receiving bank” means the bank to which the sender’s instruction is addressed.

(e) “Sender” means the person giving the instruction to the receiving bank.

(2) If an instruction complying with subsection (1)(a) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(3) A payment order is issued when it is sent to the receiving bank.

**Funds transfer - definitions.**

12A:4A-104. Funds transfer - definitions.

In this chapter:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

**Other definitions.**

12A:4A-105. Other definitions.

(1) In this chapter:

(a) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(b) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(c) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(d) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(e) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a pay-

ment order by a bank may be transmitted to the bank to which the order is addressed.

(f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(g) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 12A:1-201(8)).

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance"	Section 12A:4A-209
"Beneficiary"	Section 12A:4A-103
"Beneficiary's bank"	Section 12A:4A-103
"Executed"	Section 12A:4A-301
"Execution date"	Section 12A:4A-301
"Funds transfer"	Section 12A:4A-104
"Funds-transfer system rule"	Section 12A:4A-501
"Intermediary bank"	Section 12A:4A-104
"Originator"	Section 12A:4A-104
"Originator's bank"	Section 12A:4A-104
"Payment by beneficiary's bank to beneficiary"	Section 12A:4A-405
"Payment by originator to beneficiary"	Section 12A:4A-406
"Payment by sender to receiving bank"	Section 12A:4A-403
"Payment date"	Section 12A:4A-401
"Payment order"	Section 12A:4A-103
"Receiving bank"	Section 12A:4A-103
"Security procedure"	Section 12A:4A-201
"Sender"	Section 12A:4A-103

(3) The following definitions in chapter 4 apply to this chapter:

"Clearing house"	Section 12A:4-104
"Item"	Section 12A:4-104
"Suspends payments"	Section 12A:4-104

(4) In addition, chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

**Time payment order is received.**

12A:4A-106. Time payment order is received.

(1) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 12A:1-



201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(2) If this chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

**Federal Reserve regulations and operating circulars.**

12A:4A-107. Federal Reserve regulations and operating circulars.

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

**Exclusion of consumer transactions governed by federal law.**

12A:4A-108. Exclusion of consumer transactions governed by federal law.

This chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. Law 95-630, 92 Stat. 3728, 15 U.S.C. §1693 et seq.) as amended from time to time.

## SUBCHAPTER 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

**Security procedure.**

12A:4A-201. Security procedure.

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the

transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

**Authorized and verified payment orders.**

**12A:4A-202. Authorized and verified payment orders.**

(1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(2) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(4) The term “sender” in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (1), or it is effective as the order of the customer under subsection (2).

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and in section 12A:4A-203(1)(a), rights and obligations arising under this section or section 12A:4A-203 may not be varied by agreement.

**Unenforceability of certain verified payment orders.**

12A:4A-203. Unenforceability of certain verified payment orders.

(1) If an accepted payment order is not, under section 12A:4A-202(1), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 12A:4A-202(2), the following rules apply:

(a) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(b) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(2) This section applies to amendments of payment orders to the same extent it applies to payment orders.

**Refund of payment and duty of customer to report with respect to unauthorized payment order.**

12A:4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(1) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 12A:4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 12A:4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the

bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(2) Reasonable time under subsection (1) may be fixed by agreement as stated in section 12A:1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (1) may not otherwise be varied by agreement.

**Erroneous payment orders.**

**12A:4A-205. Erroneous payment orders.**

(1) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(a) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 12A:4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (b) and (c).

(b) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (1), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(c) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (1), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the bene-

ficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(2) If (i) the sender of an erroneous payment order described in subsection (1) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(3) This section applies to amendments to payment orders to the same extent it applies to payment orders.

**Transmission of payment order through funds-transfer or other communication system.**

12A:4A-206. Transmission of payment order through funds-transfer or other communication system.

(1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(2) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

**Misdescription of beneficiary.**

12A:4A-207. Misdescription of beneficiary.

(1) Subject to subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(a) Except as otherwise provided in subsection (3), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(3) If (i) a payment order described in subsection (2) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (2)(a), the following rules apply:

(a) If the originator is a bank, the originator is obliged to pay its order.

(b) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(4) In a case governed by subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

**Misdescription of intermediary bank or beneficiary's bank.**

12A:4A-208. Misdescription of intermediary bank or beneficiary's bank.

(1) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (2)(a), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(c) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it

executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(d) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 12A:4A-302(1)(a).

**Acceptance of payment order.**

**12A:4A-209. Acceptance of payment order.**

(1) Subject to subsection (4), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(2) Subject to subsections (3) and (4), a beneficiary's bank accepts a payment order at the earliest of the following times:

(a) when the bank (i) pays the beneficiary as stated in section 12A:4A-405(1) or 12A:4A-405(2), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(b) when the bank receives payment of the entire amount of the sender's order pursuant to section 12A:4A-403(1)(a) or 12A:4A-403(1)(b); or

(c) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(3) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not



occur under subsection (2)(b) or (2)(c) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(4) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 12A:4A-211(2), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

**Rejection of payment order.**

**12A:4A-210. Rejection of payment order.**

(1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(2) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 12A:4A-211(4) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during

that period falls below the amount of the order, the amount of interest is reduced accordingly.

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

**Cancellation and amendment of payment order.**

12A:4A-211. Cancellation and amendment of payment order.

(1) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to subsection (1), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended,

the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(6) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(7) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(8) A funds-transfer system rule is not effective to the extent it conflicts with subsection (3)(b).

**Liability and duty of receiving bank regarding unaccepted payment order.**

12A:4A-212. Liability and duty of receiving bank regarding unaccepted payment order.

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this chapter, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 12A:4A-209, and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds

transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

### **SUBCHAPTER 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK**

#### **Execution and execution date.**

##### **12A:4A-301. Execution and execution date.**

(1) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(2) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

#### **Obligations of receiving bank in execution of payment order.**

##### **12A:4A-302. Obligations of receiving bank in execution of payment order.**

(1) Except as provided in subsections (2) through (4), if the receiving bank accepts a payment order pursuant to section 12A:4A-209(1), the bank has the following obligations in executing the order:

(a) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(b) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its

payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(2) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(3) Unless subsection (1)(b) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(4) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

**Erroneous execution of payment order.**

**12A:4A-303. Erroneous execution of payment order.**

(1) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 12A:4A-402(3) if that subsection is otherwise satisfied.

The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(2) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 12A:4A-402(3) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(3) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

**Duty of sender to report erroneously executed payment order.**

12A:4A-304. Duty of sender to report erroneously executed payment order.

If the sender of a payment order that is erroneously executed as stated in section 12A:4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 12A:4A-402(4) for the period before the bank learns of the execution error. The bank is

not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

**Liability for late or improper execution or failure to execute payment order.**

12A:4A-305. Liability for late or improper execution or failure to execute payment order.

(1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 12A:4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(2) If execution of a payment order by a receiving bank in breach of section 12A:4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (1), resulting from the improper execution. Except as provided in subsection (3), additional damages are not recoverable.

(3) In addition to the amounts payable under subsections (1) and (2), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(4) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(5) Reasonable attorney's fees are recoverable if demand for compensation under subsection (1) or (2) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (4) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (4) is made and refused before an action is brought on the claim.

(6) Except as stated in this section, the liability of a receiving bank under subsections (1) and (2) may not be varied by agreement.

#### SUBCHAPTER 4. PAYMENT

##### **Payment date.**

12A:4A-401. Payment date.

“Payment date” of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary’s bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary’s bank and, unless otherwise determined, is the day the order is received by the beneficiary’s bank.

##### **Obligation of sender to pay receiving bank.**

12A:4A-402. Obligation of sender to pay receiving bank.

(1) This section is subject to sections 12A:4A-205 and 12A:4A-207.

(2) With respect to a payment order issued to the beneficiary’s bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(3) This subsection is subject to subsection (5) and to section 12A:4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary’s bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender’s order. Payment by the sender is not due until the execution date of the sender’s order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary’s bank of a payment order instructing payment to the beneficiary of that sender’s payment order.

(4) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 12A:4A-204 and 12A:4A-304, interest is payable on the refundable amount from the date of payment.

(5) If a funds transfer is not completed as stated in subsection (3) and an intermediary bank is obliged to refund payment as stated in subsection (4) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 12A:4A-



302(1)(a), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (4).

(6) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (3) or to receive refund under subsection (4) may not be varied by agreement.

**Payment by sender to receiving bank.**

**12A:4A-403. Payment by sender to receiving bank.**

(1) Payment of the sender's obligation under section 12A:4A-402 to pay the receiving bank occurs as follows:

(a) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(b) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(c) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(2) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate bal-

ance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(3) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 12A:4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(4) In a case not covered by subsection (1), the time when payment of the sender's obligation under section 12A:4A-402(2) or 12A:4A-402(3) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

**Obligation of beneficiary's bank to pay and give notice to beneficiary.**

12A:4A-404. Obligation of beneficiary's bank to pay and give notice to beneficiary.

(1) Subject to sections 12A:4A-211(5), 12A:4A-405(4), and 12A:4A-405(5), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(2) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by

the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(3) The right of a beneficiary to receive payment and damages as stated in subsection (1) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (2) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

**Payment by beneficiary's bank to beneficiary.**

**12A:4A-405. Payment by beneficiary's bank to beneficiary.**

(1) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under section 12A:4A-404(1) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(2) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 12A:4A-404(1) occurs is governed by principles of law that determine when an obligation is satisfied.

(3) Except as stated in subsections (4) and (5), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(4) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank

is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 12A:4A-406.

(5) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under section 12A:4A-406, and (iv) subject to section 12A:4A-402(5), each sender in the funds transfer is excused from its obligation to pay its payment order under section 12A:4A-402(3) because the funds transfer has not been completed.

**Payment by originator to beneficiary; discharge of underlying obligation.**

12A:4A-406. Payment by originator to beneficiary; discharge of underlying obligation.

(1) Subject to sections 12A:4A-211(5), 12A:4A-405(4), and 12A:4A-405(5), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(2) If payment under subsection (1) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (1) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means comply-

ing with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 12A:4A-404(1).

(3) For the purpose of determining whether discharge of an obligation occurs under subsection (2), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(4) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

## SUBCHAPTER 5. MISCELLANEOUS PROVISIONS

**Variation by agreement and effect of funds-transfer system rule.**

12A:4A-501. Variation by agreement and effect of funds-transfer system rule.

(1) Except as otherwise provided in this chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(2) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this chapter, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 12A:4A-404(3), 12A:4A-405(4), and 12A:4A-507(3).

**Creditor process served on receiving bank; set-off by beneficiary's bank.**

12A:4A-502. Creditor process served on receiving bank; set-off by beneficiary's bank.

(1) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(2) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(3) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(a) The bank may credit the beneficiary's account. The amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(b) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(c) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(4) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

**Injunction or restraining order with respect to funds transfer.**

12A:4A-503. Injunction or restraining order with respect to funds transfer.

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

**Order in which items and payment orders may be charged to account; order of withdrawals from account.**

12A:4A-504. Order in which items and payment orders may be charged to account; order of withdrawals from account.

(1) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(2) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

**Preclusion of objection to debit of customer's account.**

12A:4A-505. Preclusion of objection to debit of customer's account.

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

**Rate of interest.**

12A:4A-506. Rate of interest.

(1) If, under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(2) If the amount of interest is not determined by an agreement or rule as stated in subsection (1), the amount is calculated by

multiplying the applicable federal funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable federal funds rate is the average of the federal funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The federal funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

**Choice of law.**

12A:4A-507. Choice of law.

(1) The following rules apply unless the affected parties otherwise agree or subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in each paragraph of subsection (1) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other



sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(4) In the event of inconsistency between an agreement under subsection (2) and a choice-of-law rule under subsection (3), the agreement under subsection (2) prevails.

(5) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

3. N.J.S.12A:1-105 is amended to read as follows:

**Territorial application of the act; parties' power to choose applicable law.**

12A:1-105. Territorial application of the act; parties' power to choose applicable law.

(1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this State.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 12A:2-402.

Applicability of the Chapter on Leases. 12A:2A-105 and 12A:2A-106.

Applicability of the Chapter on Bank Deposits and Collections. 12A:4-102.

Governing law in the Chapter on Funds Transfers. 12A:4A-507.

Applicability of the Chapter on Investment Securities. 12A:8-106.

Perfection provisions of the Chapter on Secured Transactions.  
12A:9-103.

4. N.J.S.12A:1-201 is amended to read as follows:

**General definitions.**

12A:1-201. General definitions.

Subject to additional definitions contained in the subsequent chapters of this act which are applicable to specific chapters or subchapters thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (12A:1-205 and 12A:2-208). Whether an agreement has legal consequences is determined by the provisions in this act, if applicable; otherwise by the law of contracts (12A:1-103). (Compare "Contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

"Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the buyer is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including

oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "Agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document shall purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent

that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to the person or to the person's order or to bearer or in blank.

(21) To "honor" is to pay or accept and pay, where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay the person's debts in the ordinary course of business or cannot pay the person's debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when:

(a) The person has actual knowledge of it; or

(b) The person has received a notice or notification of it; or

(c) From all the facts and circumstances known to the person at the time in question the person has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when:

(a) It comes to the person's attention; or

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by the person as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the

time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to the attention of the individual if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (See 12A:1-102).

(31) "Presumption" or "presumed" means that the trier of fact shall find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (12A:2-401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 12A:2-401 is not a "security interest," but a buyer

may also acquire a "security interest" by complying with chapter 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest," but a consignment in any event is subject to the provisions on consignment sales (12A:2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

"Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

"Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value" Except as otherwise provided with respect to negotiable instruments and bank collections (12A:3-303, 12A:4-208 and 12A:4-209) a person gives "value" for rights if the person acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a pre-existing claim; or

(c) By accepting delivery pursuant to a pre-existing contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

5. N.J.S.12A:2-403 is amended to read as follows:

**Power to transfer; good faith purchase of goods; "entrusting".**

12A:2-403. Power to transfer; good faith purchase of goods; "entrusting".

(1) A purchaser of goods acquires all title which the transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has this power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale", or

(d) the delivery was procured through fraud punishable under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between



the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be theft under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Chapters on Secured Transactions (Chapter 9) and Documents of Title (Chapter 7).

6. N.J.S.12A:9-113 is amended to read as follows:

**Security interests arising under chapter on sales or under chapter on leases.**

12A:9-113. Security interests arising under chapter on sales or under chapter on leases.

A security interest arising solely under the Chapter on Sales (Chapter 2) or the Chapter on Leases (Chapter 2A) is subject to the provisions of this Chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by (i) the Chapter on Sales (Chapter 2) in the case of a security interest arising solely under that Chapter or (ii) by the Chapter on Leases (Chapter 2A) in the case of a security interest arising solely under that Chapter.

7. N.J.S.12A:9-302 is amended to read as follows:

**When filing is required to perfect security interests; security interests to which filing provisions of this chapter do not apply.**

12A:9-302. When filing is required to perfect security interests; security interests to which filing provisions of this chapter do not apply.

(1) A financing statement shall be filed to perfect all security interests except the following:

(a) A security interest in collateral in possession of the secured party under 12A:9-305;

(b) A security interest temporarily perfected in instruments or documents without delivery under 12A:9-304 or in proceeds for a 10-day period under 12A:9-306;

(c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered;

and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in 12A:9-313;

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) A security interest of a collecting bank (12A:4-208) or in securities (12A:8-321) or arising under the chapter on sales (see 12A:9-113) or covered in subsection (3) of this section;

(g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this chapter is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this chapter for filing of the security interest; or

(b) The following statutes of this State:

R.S.39:10-1 to R.S.39:10-9 both inclusive;

P.L.1971, c.311 (C.39:10-9.1 and C.39:10-9.2);

R.S.39:10-10 to R.S.39:10-16 both inclusive;

R.S.39:10-18 to R.S.39:10-25 both inclusive;

P.L.1984, c.152 (C.12:7A-1 to C.12:7A-29 both inclusive);

but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter (subchapter 4) apply to a security interest in that collateral created by the person as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of 12A:9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in 12A:9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this chapter.

8. N.J.S.12A:9-306 is amended to read as follows:

**“Proceeds”; secured party’s rights on disposition of collateral.**

12A:9-306. “Proceeds”; secured party’s rights on disposition of collateral.

(1) “Proceeds” includes whatever is received upon the sale, lease, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are “cash proceeds”. All other proceeds are “noncash proceeds”.

(2) Except where this chapter or the chapter on leases (2A) otherwise provides, a security interest continues in collateral notwithstanding sale, lease, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) The security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) In identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) Subject to any right of set-off; and

(ii) Limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during that period and (II) the cash proceeds received by the debtor during that period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale or lease of goods results in an account or chattel paper which is transferred by the seller or lessor to a secured party, and if the goods are returned to or are repossessed by the seller or lessor or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale or lease, for an indebtedness of the seller or lessor which is still unpaid, the original security interest attaches again to the goods covered by the sale or lease and continues as a perfected security interest if it was perfected at the time when the goods were sold or leased. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party shall take possession of the returned or repossessed goods or shall file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. This security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under 12A:9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. This security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) shall be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

9. N.J.S.12A:9-318 is amended to read as follows:

**Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.**

12A:9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in 12A:9-206 the rights of an assignee are subject to

(a) All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee shall seasonably furnish reasonable proof that the assignment has been made and unless the assignee does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in chattel paper or a security interest in a general intangible for money due or to become due or requires the account debtor's consent to the assignment or security interest.

10. Section 1 of P.L.1979, c.222 (C.40A:11-40) is amended to read as follows:

**C.40A:11-40 Authorization to purchase specific materials at auction; procedure.**

1. Notwithstanding any provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to the contrary, the governing body may by resolution authorize the purchasing agent of the contracting unit to purchase specific materials at auction for a price not to exceed 85% of the price of equivalent materials as determined pursuant to this section. Such resolution shall be adopted at least 10 days prior to the auction and shall be filed with the Director of the Division of Local Government Services within 3 days of its adoption. Any such auction shall be open to any person to attend and bid on such materials, shall be conducted pursuant to N.J.S.12A:2-328, and shall be conducted by a licensed auctioneer. Prior to adoption of the resolution, the purchasing agent shall solicit at least three written quotations of prices for which new materials equivalent to those to be purchased at auction were actually sold within the previous year. The lowest of the three prices so quoted shall be the determining price quotation for the authorization to purchase at auction for a price not to exceed 85% thereof. The authorizing resolution adopted by the governing body shall set forth the three price quotations so quoted and the sources thereof, and shall state that the expenditure of money for the purchase is not made in violation of N.J.S.40A:4-57, and has been properly certified by the chief finance officer of the local unit.

Any purchasing agent who shall purchase materials at auction pursuant to this section shall, within 14 days of the occurrence of such auction, file a report with the clerk of the governing body and the director, setting forth: the nature, quantity and price of the materials so purchased; the three price quotations solicited prior to such auction, and the sources thereof; and, the name and license number of the auctioneer who conducted such auction.

**Repealer.**

11. Chapter 6 of Title 12A of the New Jersey Statutes and N.J.S.12A:9-111 are repealed.

12. This act shall take effect on the 90th day after enactment. Section 2 of this act shall apply to funds transfers begun after the effective date of this act and sections 1 and 3 through 10 of this act shall apply to all lease contracts that are first made or that first become effective between the parties on or after the effective

date of this act. This act shall not apply to lease contracts first made or that first became effective prior to the effective date of this act.

Furthermore, this act shall not apply to any extension, modification, renewal or supplement of or to a lease contract first made, or that first became effective between the parties, prior to the effective date of this act, unless the parties to the lease contract specifically agree in writing that the lease contract as extended, amended, modified, renewed or supplemented, shall be governed by this act.

Approved October 12, 1994.

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## CHAPTER 115

AN ACT concerning false alarms and amending N.J.S.2C:33-3.

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

1. N.J.S.2C:33-3 is amended to read as follows:

**False public alarms.**

2C:33-3. False Public Alarms. a. Except as provided in subsection b. or c., a person is guilty of a crime of the fourth degree if he initiates or circulates a report or warning of an impending fire, explosion, bombing, crime, catastrophe or emergency knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconveniences or alarm. A person is guilty of a crime of the fourth degree if he knowingly causes such false alarm to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.

b. A person is guilty of a crime of the third degree if in addition to the report or warning initiated, circulated or transmitted under subsection a., he places or causes to be placed any false or facsimile bomb in a building, place of assembly, or facility of public transport or in a place likely to cause public inconvenience or alarm.

c. A person is guilty of a crime of the third degree if a violation of subsection a. of this section in fact results in serious bodily injury to another person. A person is guilty of a crime of the second degree if a violation of subsection a. of this section in fact results in death.

d. For the purposes of this section, "in fact" means that strict liability is imposed.

2. This act shall take effect immediately.

Approved October 12, 1994.

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#### CHAPTER 116

AN ACT concerning the salaries of council aides in certain cities and amending P.L.1973, c.89.

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

1. Section 1 of P.L.1973, c.89 (C.40:69A-60.5) is amended to read as follows:

**C.40:69A-60.5 Appointment of executive secretary, aides for council member; terms; compensation.**

1. The municipal council of any municipality having a population of more than 270,000 which, prior to January 9, 1982 had adopted the form of government designated as "Mayor-Council Plan C" provided for in article 5 of P.L.1950, c.210 (C.40:69A-55 et seq.), may appoint an executive secretary and not more than four aides for each council member, who shall serve, and be removable at the pleasure of the council member, and who shall serve in the unclassified service of the civil service of the city and shall receive such salary as shall be fixed by ordinance, but said salary shall not exceed the salaries of persons holding the positions of executive secretary or aide on April 26, 1985. Persons appointed pursuant to this section may have their salaries increased on a periodic basis in accordance with the recommendation in an annual merit evaluation for each aide, to be filed with the municipal clerk by the council members, but not in excess of the average percentage increase granted to other municipal employees in the same period.

The municipal council of any municipality having a population of more than 200,000, but less than 270,000, which, prior to January 9, 1982, had adopted the form of government designated as "Mayor-Council Plan C" provided for in article 5 of P.L.1950, c.210 (C.40:69A-55 et seq.) may appoint not more than one aide for each



council member, who shall serve, and be removable at the pleasure of the council member, and who shall serve in the unclassified service of the civil service of the city and shall receive a salary as shall be fixed by ordinance, except that the salary so fixed shall not exceed \$15,000.

No municipality shall adopt the provisions of this section on or after October 26, 1985.

2. This act shall take effect immediately.

Approved October 12, 1994.

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#### CHAPTER 117

AN ACT concerning partnership reports under the gross income tax, amending N.J.S.54A:8-6.

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

1. 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 and address of each partner of the partnership for taxable years ending on or after December 31, 1994. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year.

Each partnership required to file a return under this subsection for any taxable year shall, on or before the day on which the return for the taxable year is required to be filed, furnish to each person who is a partner or who holds an interest in such partnership as a nominee for another person at any time during that taxable year a copy of such information required to be shown on such return as the director may prescribe.

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.

2. This act shall take effect immediately

Approved October 12, 1994.

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## CHAPTER 118

AN ACT concerning underground facilities, supplementing chapter 2 of Title 48 of the Revised Statutes, amending P.L.1989, c.80, and repealing N.J.S.2C:17-4 and N.J.S.2C:17-5.

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

**C.48:2-73 Short title.**

1. Sections 1 through 19 of this act shall be known and may be cited as the "Underground Facility Protection Act."

**C.48:2-74 Findings, declarations, determinations.**

2. The Legislature finds and declares that damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public safety; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition.

The Legislature further determines that the Board of Public Utilities is the appropriate State agency to designate the operator of, and provide policy oversight to, the One-Call Damage Prevention System and enforce the provisions of this act.

**C.48:2-75 Definitions.**

3. As used in this act:

"Board" means the Board of Public Utilities;

"Business day" means any day other than Saturday, Sunday, or a nationally or State recognized holiday;

"Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating or any weakening of the support for the facility or protective housing, including, but not limited to a break, leak, dent, gouge, groove, or other damage to the facility, its lines, or their coating or cathodic protection.

"Emergency" means any condition constituting a clear and present danger to life, health or property caused by the escape of any material or substance transported by means of an underground facility or the interruption of a vital communication or public service that requires immediate action to prevent or mitigate loss or potential loss of the communication or public service, or any condition on or affecting a transportation right-of-way or transportation facility that creates a risk to the public of potential injury or property damage;

**"Excavate" or "excavating" or "excavation" or "demolition"** means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosive, and includes but is not limited to drilling, grading, boring, milling to a depth greater than six inches, trenching, tunneling, scraping, tree and root removal, cable or pipe plowing, fence post or pile driving, and wrecking, razing, rending, or removing any structure or mass material, but does not include routine residential property or right-of-way maintenance or landscaping activities performed with non-mechanized equipment, excavation within the flexible or rigid pavement box within the right-of-way, or the tilling of soil for agricultural purposes to a depth of 18 inches or less;

**"Excavator"** means any person performing excavation or demolition;

**"Hand digging"** means any excavation involving non-mechanized tools or equipment, including but not limited to digging with shovels, picks and manual post-hole diggers;

**"Mechanized equipment"** means equipment powered by a motor, engine, or hydraulic, pneumatic or electrical device, including but not limited to trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows, and other equipment used for plowing-in cable or pipe, but does not include tools manipulated solely by human power;

**"One-Call Damage Prevention System"** means the communication system established pursuant to section 4 of this act;

**"Operator"** means a person owning or operating, or controlling the operation of, an underground facility, but shall not include a homeowner who owns only residential underground facilities, such as an underground lawn sprinkler system or an underground structure for a residential low-voltage lighting system;

**"Person"** means any individual, firm, joint venture, partnership, corporation, association, State, county, municipality, public agency or authority, bi-state or interstate agency or authority, public utility, cooperation association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

**"Public entity"** means any federal, State, county or municipal entity responsible for issuing road opening, building, blasting, demolition or excavation permits;

**"Site"** means the specific place where excavation work is performed or to be performed and shall be identified by street address referenced to the nearest intersecting street and subdivi-

sion name, if applicable, as well as by lot and block number, if available and by kilometer or mile marker for railways;

“State department or agency” means any department, public authority, public agency, public commission, or other political subdivision of the State, including any county, municipality or political subdivision thereof.

“Underground facility” means any public or private personal property which is buried, placed below ground, or submerged on a right-of-way, easement, public street, other public place or private property and is being used or will be used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, or traffic control, or for the transportation of a hazardous liquid regulated pursuant to the “Hazardous Liquid Pipeline Safety Act of 1979” (49 U.S.C. app. § 2001 et seq.), but does not include storm drains or gravity sewers.

**C.48:2-76 One-Call Damage Prevention System, established; rules, regulations.**

4. The Board of Public Utilities shall establish a One-Call Damage Prevention System pursuant to the provisions of this act, and may adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), such rules and regulations as it deems necessary to implement the provisions of this act. This system shall be a single Statewide 24-hour, seven-day-a-week notification center which shall:

- a. Receive and record the notice of intent to excavate provided by excavators pursuant to subsection a. of section 10 of this act;
- b. Assign a confirmation number to each notice of intent to engage in an excavation, inform the excavator of the confirmation number, and maintain a register showing the name, address, and telephone number of the excavator, the site to which the notice pertains, and the assigned confirmation number;
- c. Promptly transmit to the appropriate operators the information received from an excavator regarding any intended excavation in areas where the operators have underground facilities;
- d. Maintain a record of each notice of intent received pursuant to subsection a. of this section for a period of seven years from the date of notice; and
- e. Provide to the excavator the names of the operators who will be notified by the One-Call Damage Prevention System of the intended excavation.

**C.48:2-77 Operation of One-Call Damage Prevention System.**

5. a. Two years after the effective date of this act, the board shall designate, through an appropriate administrative mechanism, a person to operate the One-Call Damage Prevention System. The board may, as necessary, adopt rules establishing the process by which it shall select a person to operate the system.

b. The board shall designate the Garden State Underground Plant Location Service (GSUPLS), a non-profit corporation of this State, to operate the One-Call Damage Prevention System, on an interim basis, for two years after the effective date of this act. During this interim period, GSUPLS will operate the system in conformance with the provisions of this act and the board shall have policy oversight over operation of the system.

**C.48:2-78 Appropriate waiver conditions.**

6. The board may grant a waiver from the requirements of section 8 of this act for such reasons as it deems appropriate. The board shall have sole jurisdiction and authority for reviewing and granting or denying any waiver requested pursuant to this section. However, a waiver shall be deemed appropriate in those instances when an operator demonstrates that:

a. Damage to the underground facilities owned, operated, or controlled by the operator would pose no threat to the public safety; or

b. There is no possibility that an underground facility owned, operated or controlled by the operator will be damaged by excavating activities.

An operator who has requested a waiver pursuant to this section shall participate in the One-Call Damage Prevention System while the request is being considered by the board.

**C.48:2-79 System operator, responsibilities.**

7. The system operator shall:

a. Operate the One-Call Damage Prevention System, which shall include but not be limited to the services described in section 4 of this act;

b. Establish a schedule of fees under which each operator shall pay an equitable share of the costs of maintaining the One-Call Damage Prevention System. This schedule of fees shall be submitted to the board for review and approval and shall be subject to the continuing jurisdiction of the board;

c. Ensure that the One-Call Damage Prevention System operates in all areas of the State. The telephone number of the One-

Call Damage Prevention System for providing any notice required by this act shall be a toll-free number;

d. Notify the public and known excavators of the requirement pursuant to this act for the mandatory use of the One-Call Damage Prevention System to locate underground facilities; and

e. Comply with all other provisions of this act.

**C.48:2-80 Underground facility operator, responsibilities; underground facility markings.**

8. a. Except as provided in sections 6 and 9 of this act, the operator of an underground facility shall:

(1) Participate in and comply with the requirements of the One-Call Damage Prevention System established pursuant to section 4 of this act; and

(2) Mark, stake, locate or otherwise provide the position and number of its underground facilities which may be affected by a planned excavation or demolition within three business days after receipt of the information concerning a notice of intent to excavate transmitted pursuant to subsection c. of section 10 of this act. An underground facility shall be marked in accordance with standards approved by the board, which shall be based upon approved industry standards, and shall be marked at the site within 18 inches horizontally from the outside wall of the facility, in a manner that will enable the excavator to employ prudent techniques, which may include hand-dug test holes, to determine the precise position of the operator's underground facility. An underground facility shall be marked from information available in the operator's records or by use of standard locating techniques other than excavation. In temporarily marking the approximate position of an underground facility, an operator shall utilize the following color coding:

Utility and Type Product	Identifying color
Electric Power Distribution and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and Transmission	High Visibility Safety Yellow
Oil Distribution and Transmission	High Visibility Safety Yellow
Dangerous Materials, Product Lines, Steam Lines	High Visibility Safety Yellow

Telephone and Telecommunications	Safety Alert Orange
Police and Fire Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Lines	Safety Green

b. If an operator does not own, operate or control any underground facilities at the site concerning which he received information of a notice of intent to excavate transmitted pursuant to subsection c. of section 4 of this act, the operator shall make a reasonable effort to so advise the person giving the notice of intent to excavate, providing the notice is given within the time frame set forth in subsection a. of section 10 of this act.

c. An operator shall maintain a record of all damage to its underground facilities, including all damage reported by an excavator pursuant to subsection e. of section 10 of this act. An operator shall provide an updated copy of this record to the board on a quarterly basis.

**C.48:2-81 Marking of facilities; nonapplicability; excavation, permitting process on State property.**

9. a. The requirement, pursuant to paragraph (2) of subsection a. of section 8 of this act, for an operator to mark, stake, locate or otherwise provide the position of its underground facilities shall not apply to an underground non-metallic water pipe or non-metallic water distribution facility installed prior to the effective date of this act. An operator that qualifies for this exemption shall cooperate with the excavator in reasonable efforts to determine the location of such facilities.

b. The requirement pursuant to paragraph (2) of subsection a. of section 8 of this act for an operator to mark, stake, locate or otherwise provide the position of its underground facilities shall be deemed met by a State department or agency when an excavation is conducted on property or a right-of-way owned or controlled by the State department or agency and the excavation is subject to an excavation permitting process by the State department or agency if:

(1) The underground facilities of the State department or agency at the proposed excavation site comprise only traffic signals and lights or street and highway lights and their associated electrical feeds, control lines and traffic sensing loops;



(2) The State department or agency excavation permit is conditional upon the excavator notifying the One-Call Damage Prevention System; and

(3) The State department or agency provides the excavator with plans of the position and number of its underground facilities during the permitting process and agrees to cooperate on a continuing basis with the excavator in reasonable efforts to determine the location of such facilities, including notifying an excavator of any changes which may occur in the position or number of underground facilities after the initial issuance of plans to the excavator. However, the State department or agency may elect to mark, stake, or locate its underground facilities pursuant to the requirements of paragraph (2) of subsection a. of section 8 of this act.

If a State department or agency elects not to mark or stake its facilities under this subsection, an excavator who has conformed with the requirements of this act and all other applicable permit requirements, and uses reasonable care while excavating shall not be liable for damage to the State department or agency's underground facilities.

**C.48:2-82 Notification of the One-Call Damage Prevention System; excavator's duties.**

10. a. An excavator shall notify the One-Call Damage Prevention System established pursuant to section 4 of this act of his intent to engage in excavation or demolition not less than three business days and not more than 10 business days prior to the beginning of the excavation or demolition.

b. Upon notifying the One-Call Damage Prevention System, an excavator shall provide the following information:

(1) The name and telephone number of the person notifying the system;

(2) The name, address, and office and field telephone numbers and facsimile numbers of the excavator;

(3) The name, address and telephone number of the person for whom the excavation work is to be performed; and

(4) The specific site location, starting date, starting time and description of the intended excavation or demolition, including the approximate depth of the excavation or demolition.

c. Where appropriate to provide clarification, an excavator shall mark and identify the perimeter of the proposed site of the excavation by the color white prior to notifying the One-Call Damage Prevention System of his intent to engage in excavation or demolition.

d. An excavator shall:

(1) Not operate any mechanized equipment within two feet horizontally of the outside wall of any underground facility marked in accordance with the provisions of this act, or marked in accordance with any rule, regulation, or order adopted pursuant to this act, unless the underground facility has first been located by hand digging. Mechanized equipment shall be used with proper care and under adequate supervision to avoid damage to the underground facility;

(2) Plan the excavation or demolition to avoid damage to and to minimize interference with underground facilities;

(3) Use reasonable care during excavation or demolition to avoid damage to or interference with underground facilities; and

(4) After commencement of excavation or demolition, protect and preserve the marking, staking, or other designation of an underground facility until the marking, staking, or other designation is no longer necessary for safe excavation or demolition.

e. An excavator shall immediately report to the operator of an underground facility any damage to the underground facility caused by or discovered by the excavator in the course of an excavation or demolition.

**C.48:2-83 Proof of notification required for permission to excavate.**

11. The provisions of any other law, rule, regulation or ordinance to the contrary notwithstanding, any permit or permission for a road opening, building, blasting, demolition or excavation granted by a public entity to an excavator that will result in excavation or demolition activity shall not be effective until the excavator provides proof to the public entity that the excavator has notified the One-Call Damage Prevention System pursuant to section 10 of this act. This proof may be provided by supplying the public entity with the confirmation number assigned to the notice of intent pursuant to subsection b. of section 4 of this act.

**C.48:2-84 Nonapplicability to emergencies.**

12. The provisions of this act shall not apply when an excavation or demolition is undertaken in response to an emergency, provided that the One-Call Damage Prevention System is notified at the earliest reasonable opportunity and that all reasonable precautions are taken to protect underground facilities.

**C.48:2-85 Map of pipeline; filing.**

13. a. An operator of an interstate natural gas pipeline or an interstate hazardous liquid underground pipeline shall file a map depicting the route of the pipeline in this State with the clerk of each municipality in the State through which the interstate pipeline passes, with the board, and with the Department of Environmental Protection.

b. Nothing in this act shall be construed to modify or interfere with the enforcement jurisdiction of the United States Department of Transportation with regard to the operators of interstate pipelines.

**C.48:2-86 Violation of act; injunction; civil penalties.**

14. a. Whenever it appears to the board that a person has violated any provision of this act, or any rule, regulation or order adopted pursuant thereto, it may issue an order specifying the provision or provisions of this act, or the rule, regulation 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. Such order shall be effective upon receipt and any person to whom such order is directed shall comply with the order immediately.

b. The board may institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of this act, or of any rule or regulation adopted pursuant to this act and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief, notwithstanding the provisions of R.S.48:2-24.

Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction; and
- (2) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection. Assessments under this subsection shall be paid to the State Treasurer.

The board or an affected operator may institute an action in the Superior Court to enjoin a person whose repeated failure to comply with the provisions of this act constitutes a threat to public safety from engaging in any further excavation or demolition work within the State, except under such terms and conditions as the Superior Court may prescribe to ensure the safety of the public.

c. The provisions of section 16 of this act to the contrary notwithstanding, a person who is determined by the board, after notice and opportunity to be heard, to have violated any provision

of this act or any rule, regulation, or order adopted pursuant thereto with respect to a natural gas underground pipeline or distribution facility, or a hazardous liquid underground pipeline or distribution facility, shall be liable to a civil penalty not to exceed \$25,000 for each violation for each day the violation continues, except that the maximum civil penalty may not exceed \$500,000 for any related series of violations.

Any civil penalty imposed pursuant to this subsection may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith effort on the part of the violator in attempting to achieve compliance; the violator's ability to pay the penalty; and other factors the board determines to be appropriate.

The amount of the penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered, if necessary, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Superior Court shall have jurisdiction to enforce the provisions of "the penalty enforcement law" in connection with this act.

d. Pursuit of any remedy specified in this section shall not preclude the pursuit of any other remedy, including any civil remedy for damage to an operator's underground facilities or for damage to a person's property, provided by any other law. Administrative and judicial remedies provided in this section may be pursued simultaneously.

**C.48:2-87 Illegal excavation; third-degree crime.**

15. Any person who knowingly and willfully engages in an excavation without:

- a. First using the One-Call Damage Prevention System to determine the location of underground facilities in the area being excavated; or
- b. Heeding appropriate location information or markings established by any operator; or
- c. Otherwise complying with the provisions of this act; and who because of that violation damages an underground facility resulting in death, serious bodily harm, or actual damage to property or loss of service revenue exceeding \$50,000, or damages an underground hazardous liquid pipeline facility resulting in the

release of more than 50 barrels of product, shall, upon conviction, be guilty of a crime of the third degree.

Nothing in this section shall limit the jurisdiction of the board with respect to natural gas pipeline safety or limit the jurisdiction of the board or a court of competent jurisdiction with respect to the civil administrative penalty and enforcement provisions of this act.

**C.48:2-88 Penalty for operator violations.**

16. a. An operator or excavator, or the person who operates the One-Call Damage Prevention System, who violates any provision of this act or any rule or regulation or order adopted pursuant thereto shall be liable to a civil penalty of not less than \$1,000 and not more than \$2,500 per day for each day the violation continues, except that the maximum civil penalty may not exceed \$25,000 for any related series of violations.

b. Any civil action pursuant to subsection a. of this section may be brought in a court of this State by the board or by an affected operator. Nothing in this act shall affect any civil remedy for damage to an operator's underground facility or for actual damage to any person's property.

**C.48:2-89 Notice failure, prima facie evidence of negligence.**

17. Evidence that an excavation or demolition that results in any damage to an underground facility was performed without providing the notice required pursuant to section 10 of this act shall be prima facie evidence in any civil or administrative proceeding that the damage was caused by the negligence of the person engaged in the excavation or demolition.

**C.48:2-90 Civil penalties to the State.**

18. All civil penalties recovered pursuant to this act shall be paid into the General Fund.

**C.48:2-91 Board's jurisdiction not affected.**

19. Nothing in this act shall limit the jurisdiction of the board:

a. Over public utilities pursuant to R.S.48:2-1 et seq., notwithstanding the fact that a public utility may be an operator or excavator as defined in section 3 of this act; or

b. Concerning natural gas pipeline safety pursuant to R.S.48:9-33.

20. Section 1 of P.L.1989, c.80 (C.48:9-33) is amended to read as follows:

**C.48:9-33 Penalties for violation of natural gas pipeline safety.**

1. a. Any person who is determined by the Board of Public Utilities, after notice and opportunity to be heard, to have violated the provisions of any law, rule, regulation, or order relating to natural gas pipeline safety shall be subject to a civil penalty of not more than \$25,000 for each such violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$500,000 for any related series of violations.

b. Any civil penalty imposed pursuant to subsection a. of this section may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the nature, circumstances, and gravity of the violation; the degree of the violator's culpability; any history of prior violations; the prospective effect of the penalty on the ability of the violator to conduct business; any good faith on the part of the violator in attempting to achieve compliance; his ability to pay the penalty; and any other factors justice may require. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the State to the person charged, or may be recovered in a summary proceeding instituted by the board in Superior Court in accordance with "the penalty enforcement law," N.J.S.2A:58-1 et seq.

c. Whenever it shall appear to the board that a person has violated, intends to violate, or will violate any provision of any law, rule, regulation, or order relating to natural gas pipeline safety, the board may institute a civil action in Superior Court for injunctive relief or for any other appropriate relief under the circumstances, and the court may proceed on any such action in a summary manner.

**Repealer.**

21. N.J.S.2C:17-4 and N.J.S.2C:17-5 are repealed.

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

Approved October 18, 1994.

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**CHAPTER 119**

**AN ACT establishing the New Jersey Task Force on Child Abuse and Neglect.**

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

**C.9:6-8.74 Short title.**

1. This act shall be known and may be cited as the “New Jersey Task Force on Child Abuse and Neglect Act.”

**C.9:6-8.75 New Jersey Task Force on Child Abuse and Neglect, established; purpose.**

2. There is established the “New Jersey Task Force on Child Abuse and Neglect.” The purpose of the task force is to study and develop recommendations regarding the most effective means of improving the quality and scope of child protective services provided or supported by State government, including a review of the practices and policies utilized by the Division of Youth and Family Services in the Department of Human Services in order to optimize coordination of child abuse-related services and investigations, promote the safety of children at risk of abuse or neglect, and ensure a timely determination with regard to reports of alleged child abuse.

**C.9:6-8.76 Task force membership.**

3. The task force shall consist of 24 members as follows: the Commissioners of Human Services, Education, Community Affairs, Corrections and Health, the Attorney General, the Chief Justice of the Supreme Court, the Public Defender and the Superintendent of State Police, or their designees, as ex officio members; two members of the Senate and the General Assembly, respectively, no more than one of whom in each case shall be of the same political party; and the remaining public members to be appointed by the Governor.

The task force membership shall comply with the multidisciplinary requirements set forth in the “Child Abuse Prevention and Treatment Act,” Pub.L.93-247 (42 U.S.C. §5101 et seq.).

The task force shall be co-chaired, one co-chair shall be the Commissioner of Human Services and the other shall be appointed by the Governor with the advice and consent of the Senate. The second co-chair shall be selected from among the public members and shall serve at the pleasure of the Governor for a term not to exceed three years. The second co-chair shall be allowed to serve two three-year terms.

**C.9:6-8.77 Vacancies; compensation.**

4. Vacancies in the membership of the task force shall be filled in the same manner provided for the original appointments. The members of the task force shall serve without compensation

but may be reimbursed for traveling and other miscellaneous expenses necessary to perform their duties, within the limits of funds made available to the task force for its purposes.

**C.9:6-8.78 Providing staff.**

5. The Department of Human Services shall provide professional and clerical staff to the task force as necessary to effectuate the purposes of this act.

**C.9:6-8.79 Task force's use of services and consultants.**

6. a. The task force shall be entitled to call upon the services of any State, county or municipal department, board, commission or agency, as may be available to it for these purposes, and to incur such traveling and other miscellaneous expenses as it may deem necessary for the proper execution of its duties and as may be within the limit of funds appropriated or otherwise made available to it for these purposes.

b. The task force shall consult with such organizations and associations as the Association for Children of New Jersey, the New Jersey Association of Children's Residential Facilities, the New Jersey Chapter of the National Association of Social Workers, Inc., the Child Placement Advisory Council, the Medical Society of New Jersey, the New Jersey State Nurses Association, the New Jersey Education Association, the New Jersey Foster Parent Association, and the Graduate School of Social Work of Rutgers, The State University.

**C.9:6-8.80 Meetings; hearings.**

7. The task force may meet and hold hearings at such places as it shall designate during the sessions or recesses of the Legislature.

**C.9:6-8.81 Funds, solicitation, use.**

8. The task force may solicit, receive, disburse and monitor grants and other funds made available from any governmental, public, private, not-for-profit or for-profit agency, including funds made available under any federal or State law, regulation or program.

**C.9:6-8.82 Report.**

9. The task force shall present a report of its findings and recommendations to the Governor and the Legislature no later than one year after the organization of the task force.

10. This act shall take effect on December 31, 1996.

Approved October 26, 1994.



## CHAPTER 120

AN ACT concerning the revenue cap established for acute care hospitals in 1993 and amending P.L.1992, c.160.

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

1. Section 3 of P.L.1992, c.160 (C.26:2H-18.53) is amended to read as follows:

**C.26:2H-18.53 Revenue cap.**

3. a. For the period January 1, 1993 to December 31, 1993, hereinafter referred to as the "transition year," the Hospital Rate Setting Commission shall establish a revenue cap for each hospital whose rates had been established prior to this period by the Hospital Rate Setting Commission under the diagnosis related group methodology pursuant to P.L.1978, c.83. The Hospital Rate Setting Commission shall establish the revenue cap effective January 1, 1993.

The revenue cap shall establish the maximum amount a hospital may collect in revenues in 1993 from all payers, but shall not include payments from the fund. The revenue cap shall be based upon the same financial elements used to prepare the preliminary cost base for 1992, but shall not include any amounts provided in 1992 for a subsidy to Blue Cross and Blue Shield of New Jersey, Inc. and for patient appeals. The revenue cap shall include:

(1) a component for a hospital's bad debt as determined by the hospital's payment for bad debt from the New Jersey Health Care Trust Fund in 1992 pursuant to P.L.1991, c.187 (C.26:2H-18.24 et al.), but the total amount allowed for bad debt plus the amount a hospital is eligible to receive from the fund for its charity care subsidy shall not exceed the total amount of uncompensated care payments the hospital received in 1992 from the New Jersey Health Care Trust Fund;

(2) the hospital specific amount agreed to by a hospital and the Hospital Rate Setting Commission pursuant to the 1990 voluntary settlement program (N.J.A.C.8:31B-3.65); and

(3) an amount to be determined by the Hospital Rate Setting Commission which represents a hospital's share of the total outstanding reconciliation amounts as of December 31, 1992, including any reasonably projected reconciliation amounts for calendar year 1992, which total amount shall be adjusted so that a

hospital's revenue cap does not exceed the hospital's preliminary cost base for 1992.

b. In addition to the categories of revenues described in paragraphs (1), (2) and (3) of subsection a. of this section, which together shall constitute the hospital revenue cap for 1993, each hospital subject to this section may also retain any revenues collected in 1993 that represent an amount to provide for the financial impact of a certificate of need approved service or project that was not included in the hospital's preliminary cost base for 1992. This addition will be calculated by the department as follows:

(1) For new inpatient services, the addition to the preliminary cost base is determined by multiplying the appropriate DRG rate by the 1993 admissions resulting from that new or expanded service.

(2) For any new outpatient services, the addition to the preliminary cost base is calculated by multiplying the appropriate charge by the number of admissions related to the new or expanded service.

(3) Increased debt service costs allocated to new patient services above that debt service included in the 1992 preliminary cost base will be additions to the 1992 preliminary cost base.

This addition to the cap for any hospital which implements a new certificate of need approved service in 1992 or 1993 shall be verified by the hospital's auditor through an agreed-upon procedures report. The report shall be submitted in accordance with the procedures outlined by the department pursuant to subsection c. of this section. The department shall review and approve any addition to a hospital revenue cap due to new certificate of need projects prior to such additions being implemented.

The additional revenues that provide for the financial impact of a certificate of need approved service or project shall not be considered in the calculations of a hospital's revenue cap or in the assessment of any revenue cap penalties levied pursuant to subsection d. of this section. A hospital shall continue to provide any public health services which were formerly supported by grant funds but whose costs were included in that hospital's preliminary cost base for 1992 and shall provide for its regional hemophilia center and regional maternal and child health consortia, as applicable.

c. The department shall provide for an audit of a hospital's revenues for 1993 in a time frame established by the department.

d. A hospital whose revenues exceeded its revenue cap during 1993 shall be liable to a civil penalty of payment of an amount not to exceed 1.5 times the amount of revenue in excess of the revenue cap.

The civil penalty provided for in this section shall be recovered in an administrative proceeding held pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any monies recovered pursuant to this penalty shall be deposited in the fund.

e. In order to minimize the disruption in the transition year, any discounts negotiated between hospitals and non-governmental third party payers shall reflect cost savings resulting from the efficient use of resources and not merely cost shifts from one payer to another. The final rate shall be mutually agreeable to both parties.

f. In the event that the revenues collected by a hospital during the transition year are insufficient, the State shall not be liable for any deficiency.

2. This act shall take effect immediately and shall be retroactive to January 1, 1993.

Approved October 26, 1994.

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## CHAPTER 121

AN ACT concerning the financial facilitation of criminal activity and supplementing chapter 21 of Title 2C of the New Jersey Statutes.

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

**C.2C:21-23 Findings, declarations.**

1. The Legislature hereby finds and declares to be the public policy of this State, the following:

a. By enactment of the "Criminal Justice Act of 1970," P.L.1970, c.74 (C.52:17B-97 et seq.), the legislature recognized that the existence of organized crime and organized crime type activities present a serious threat to the political, social and economic institutions of this State.

b. By enactment of P.L.1981, c.167 (C.2C:41-1 et al.), the Legislature recognized the need to impose strict civil and criminal sanctions upon those whose activity is inimical to the general health, welfare and prosperity of this State, including, but not limited to, those who drain money from the economy by illegal conduct and then undertake the operation of otherwise legitimate businesses with the proceeds of illegal conduct.

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c. By enactment of the "Comprehensive Drug Reform Act of 1987," P.L.1987, c.106 (C.2C:35-1 et seq.), the Legislature recognized the need to punish the more culpable drug offenders with strict, consistently imposed criminal sanctions. The Legislature intended a greater culpability for those who profit from the illegal trafficking of drugs and expressed an intent that such individuals be dealt with swiftly and sternly.

d. Despite the impressive efforts and gains of our law enforcement agencies, individuals still profit financially from illegal organized criminal activities and illegal trafficking of drugs, and they continue to pose a serious and pervasive threat to the health, safety and welfare of the citizens of this State while, at the same time, converting their illegally obtained profits into "legitimate" funds with the assistance of other individuals.

e. The increased trafficking in drugs and other organized criminal activities have strengthened the money laundering industry which takes illegally acquired income and makes that money appear to be legitimate. In order to safeguard the public interest and stop the conversion of ill-gotten criminal profits, effective criminal and civil sanctions are needed to deter and punish those who are converting the illegal profits, those who are providing a method of hiding the true source of the funds, and those who facilitate such activities. It is in the public interest to make such conduct subject to strict criminal and civil penalties because of a need to deter individuals and business entities from assisting in the "legitimizing" of proceeds of illegal activity. To allow individuals or business entities to avoid responsibility for their criminal assistance in money laundering is clearly inimical to the public good.

**C.2C:21-24 Definitions.**

**2. As used in this act:**

"Attorney General" includes the Attorney General of the State of New Jersey and the Attorney General's assistants and deputies. The term also shall include a county prosecutor or the county prosecutor's designated assistant prosecutor if a county prosecutor is expressly authorized in writing by the Attorney General pursuant to this act.

"Derived from" means obtained directly or indirectly from, maintained by or realized through.

"Person" means any corporation, unincorporated association or any other entity or enterprise, as defined in subsection q. of

N.J.S.2C:20-1, which is capable of holding a legal or beneficial interest in property.

"Property" means anything of value, as defined in subsection g. of N.J.S.2C:20-1, and includes any benefit or interest without reduction for expenses incurred for acquisition, maintenance or any other purpose.

**C.2C:21-25 Money laundering; illegal investment, crime.**

3. A person is guilty of a crime if the person:

a. transports or possesses property known to be derived from criminal activity; or

b. engages in a transaction involving property known to be derived from criminal activity

(1) with the intent to facilitate or promote the criminal activity; or

(2) knowing that the transaction is designed in whole or in part

(a) to conceal or disguise the nature, location, source, ownership or control of the property derived from criminal activity; or

(b) to avoid a transaction reporting requirement under the laws of this State or any other state or of the United States; or

c. directs, organizes, finances, plans, manages, supervises, or controls the transportation of or transactions in property known to be derived from criminal activity.

d. For the purposes of this act, property is known to be derived from criminal activity if the person knows that the property involved represents proceeds from some form, though not necessarily which form, of criminal activity.

**C.2C:21-26 Knowledge inferred.**

4. For the purposes of section 3 of this act, the requisite knowledge may be inferred where the property is transported or possessed in a fashion inconsistent with the ordinary or usual means of transportation or possession of such property and where the property is discovered in the absence of any documentation or other indicia of legitimate origin or right to such property.

**C.2C:21-27 Degrees of offense; penalties; nonmerger.**

5. a. Where the amount involved is \$75,000 or more, the offense defined in section 3 of this act constitutes a crime of the second degree; otherwise, the offense constitutes a crime of the third degree. The amount involved in a prosecution for violation of this section shall be determined by the trier of fact. Amounts involved in transactions conducted pursuant to one scheme or course of conduct may be aggregated in determining the degree of the offense.

b. In addition to any other dispositions authorized by this Title, upon conviction of a violation of this section, the court may sentence the defendant to pay an amount as calculated pursuant to subsection a. of section 6 of this act.

c. Notwithstanding N.J.S.2C:1-8 or any other provision of law, a conviction of an offense defined in this section shall not merge with the conviction of any other offense constituting the criminal activity involved or from which the property was derived, and a conviction of any offense constituting the criminal activity involved or from which the property was derived shall not merge with a conviction of an offense defined in section 3 of this act. Nothing in this act shall be construed in any way to preclude or limit a prosecution or conviction for any other offense defined in this Title or any other criminal law of this State.

**C.2C:21-28 Civil action for treble damages; allocation.**

6. a. The Attorney General may institute a civil action against any person who violates section 3 of this act, and may recover a judgment against all persons who violate this section, jointly and severally, for damages in an amount equal to three times the value of all property involved in the criminal activity, together with costs incurred for resources and personnel used in the investigation and litigation of both criminal and civil proceedings. The standard of proof in actions brought under this subsection is a preponderance of the evidence, and the fact that a prosecution for a violation of this act is not instituted or, where instituted, terminates without a conviction shall not preclude an action pursuant to this subsection. A final judgment rendered in favor of the State in any criminal proceedings shall estop the defendant from denying the same conduct in any civil action brought pursuant to this subsection.

b. The cause of action authorized by this section shall be in addition to and not in lieu of any forfeiture or any other action, injunctive relief or any other remedy available at law, except that where the defendant is convicted of a violation of this act, the court in the criminal action, upon the application of the Attorney General or the prosecutor, may in addition to any other disposition authorized by this Title, sentence the defendant to pay an amount equal to the damages calculated pursuant to the provisions of this subsection, whether or not a civil action has been instituted.

c. Notwithstanding any other provision of law, all monies collected pursuant to any judgment recovered or order issued pursuant to this section shall first be allocated to the payment of any State

tax, penalty and interest due and owing to the State as a result of the conduct which is the basis for the action. Monies collected shall be allocated next in accordance with the provisions of N.J.S.2C:64-6 as if collected pursuant to chapter 64 of Title 2C, in an amount equal to the amount of all property involved in the criminal activity plus the costs incurred for resources and personnel used in the investigation and litigation. The remainder of the monies collected shall be allocated to the General Fund of the State.

**C.2C:21-29 Investigative interrogatories.**

7. a. Whenever the Attorney General, by the Attorney General's own inquiry or as the result of a complaint, determines that there exists reasonable suspicion that a violation of this act is occurring, has occurred or is about to occur, or, whenever the Attorney General believes it to be in the public interest that an investigation be made, the Attorney General may, prior to the institution of any criminal or civil action, issue in writing and cause to be served upon any person investigative interrogatories requiring the person to answer and produce material for examination.

b. Any investigative interrogatories issued pursuant to this subsection and all procedures related to such interrogatories shall comply with the provisions of N.J.S.2C:41-5.

8. This act shall take effect immediately.

Approved October 26, 1994.

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CHAPTER 122

AN ACT concerning the recycling of certain types of containers, and amending P.L.1987, c.102.

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

1. Section 2 of P.L.1987, c.102 (C.13:1E-99.12) is amended to read as follows:

**C.13:1E-99.12 Definitions.**

2. As used in sections 1 through 24 and sections 40 and 41 of P.L.1987, c.102 (C.13:1E-99.11 through 13:1E-99.32 and 13:1E-99.33 and 13:1E-99.34):

**"Agricultural or horticultural land"** means land deemed actively devoted to agricultural or horticultural use pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.);

**"Beverage"** means milk, alcoholic beverages, including beer or other malt beverages, liquor, wine, vermouth and sparkling wine, and nonalcoholic beverages, including fruit juice, mineral water and soda water and similar nonalcoholic carbonated and noncarbonated drinks intended for human consumption;

**"Beverage container"** means an individual, separate, hermetically sealed, or made airtight with a metal or plastic cap, bottle or can composed of glass, metal, plastic or any combination thereof, containing a beverage;

**"Commingled"** means a combining of nonputrescible source separated recyclable materials for the purpose of recycling;

**"County"** means any county of this State of whatever class;

**"Department"** means the Department of Environmental Protection;

**"Designated recyclable materials"** means those recyclable materials, including metal, glass, paper, or plastic, polycoated paperboard packaging, including beverage containers and aseptic packaging, food waste, corrugated and other cardboard, newspaper, magazines, or high-grade office paper designated in a district recycling plan to be source separated in a municipality pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13);

**"Disposition" or "disposition of designated recyclable materials"** means the transportation, placement, reuse, sale, donation, transfer or temporary storage for a period not exceeding six months of designated recyclable materials for all possible uses except for disposal as solid waste;

**"District"** means a solid waste management district as designated by section 10 of P.L.1975, c.326 (C.13:1E-19), except that, as used in the provisions of P.L.1987, c.102 (C.13:1E-99.11 et seq.), "district" shall not include the Hackensack Meadowlands District;

**"District recycling plan"** means the plan prepared and adopted by the governing body of a county and approved by the department to implement the State Recycling Plan goals pursuant to section 3 of P.L.1987, c.102 (C.13:1E-99.13);

**"Leaf composting facility"** means a solid waste facility which is designed and operated solely for the purpose of composting leaves and shall also include leaf mulching operations on land deemed actively devoted to agricultural or horticultural use as defined in section 5 of P.L.1964, c.48 (C.54:4-23.5);



**"Market" or "markets"** means the disposition of designated recyclable materials;

**"Municipality"** means any city, borough, town, township or village situated within the boundaries of this State;

**"Municipal solid waste stream"** means all residential, commercial and institutional solid waste generated within the boundaries of any municipality;

**"Paper"** means all paper grades, including but not limited to, newspaper, corrugated and other cardboard, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, mimeo paper, duplicator paper, and related types of cellulosic material containing not more than 10% by weight or volume of non-cellulosic material such as laminates, binders, coatings, or saturants;

**"Paper product"** means any paper items or commodities, including but not limited to, paper napkins, towels, construction material, toilet tissue, paper and related types of cellulosic products containing not more than 10% by weight or volume of non-cellulosic material such as laminates, binders, coatings, or saturants;

**"Plastic container"** means any formed or molded and hermetically sealed, or made airtight with a metal or plastic cap, rigid container with a minimum wall thickness of not less than 0.010 inches, and composed primarily of thermoplastic synthetic polymeric material;

**"Post-consumer waste material"** means 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 and which does not include secondary waste material;

**"Recognized academic institution"** means any of the following educational or research institutions located in this State: a duly authorized institution of higher education licensed by the Board of Higher Education; a public school operated by a local school district; a private vocational school; or a nonpublic school satisfying the State's compulsory attendance requirements;

**"Recyclable material"** means those materials which would otherwise become solid waste, and which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products;

**"Recycled paper"** means any paper having a total weight consisting of not less than 50% secondary waste paper material and with not less than 10% of its total weight consisting of post-consumer waste material;

**"Recycled paper product"** means any paper product consisting of not less than 50% secondary waste paper material and with not less than 10% of its total weight consisting of post-consumer waste material;

**"Recycled product"** or **"product made from recycled material"** means any nonpaper item or commodity which is manufactured or produced in whole or in part from post-consumer waste material;

**"Recycling"** means any process by which materials which would otherwise become solid waste are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products;

**"Recycling center"** means any facility designed and operated solely for receiving, storing, processing or transferring source separated recyclable materials; except that "recycling center" shall not include a scrap processing facility;

**"Recycling services"** means the services provided by persons engaging in the business of recycling, including the collection, transportation, processing, storage, purchase, sale or disposition, or any combination thereof, of recyclable materials;

**"Scrap processing facility"** means a commercial industrial facility designed and operated for receiving, storing, processing and transferring source separated, nonputrescible ferrous and nonferrous metal, which materials are purchased by the owner or operator thereof, and which are altered or reduced in volume or physical characteristics onsite by mechanical methods, including but not limited to baling, cutting, torching, crushing, or shredding, for the purposes of resale for remelting, refining, smelting or remanufacturing into raw materials or products;

**"Secondary waste material"** means waste material generated after the completion of a manufacturing process;

**"Secondary waste paper material"** means paper waste generated after the completion of a paper making process, such as envelope cuttings, bindery trimmings, printing waste, cutting and other converting waste, butt rolls and mill wrappers; except that secondary waste paper material shall not include fibrous waste generated during the manufacturing process, such as fibers recovered from waste water or trimmings of paper machine rolls, fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residue such as bark, or mill broke;

**"Source separated recyclable materials"** means recyclable materials which are separated at the point of generation by the generator thereof from solid waste for the purposes of recycling;

"Source separation" or "source separated" means the process by which recyclable materials are separated at the point of generation by the generator thereof from solid waste for the purposes of recycling;

"Vegetative waste composting facility" means a solid waste facility which is designed and operated for the purpose of composting leaves, either exclusively or in combination with other vegetative wastes authorized by the department.

2. This act shall take effect immediately.

Approved October 26, 1994.

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#### CHAPTER 123

AN ACT concerning confidential communications between clerics and penitents and amending P.L.1960, c.52.

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

1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to read as follows:

**C.2A:84A-23 Cleric-penitent privilege.**

23. Rule 511. Cleric-penitent privilege.

Any communication made in confidence to a cleric in the cleric's professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which the cleric belongs or of the religion which the cleric professes, shall be privileged. Privileged communications shall include confessions and other communications made in confidence between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counseling role.

As used in this section, "cleric" means a priest, rabbi, minister or other person or practitioner authorized to perform similar functions of any religion.

The privilege accorded to communications under this rule shall belong to both the cleric and the person or persons making the communication and shall be subject to waiver only under the following circumstances:

(1) both the person or persons making the communication and the cleric consent to the waiver of the privilege; or

(2) the privileged communication pertains to a future criminal act, in which case, the cleric alone may, but is not required to, waive the privilege.

2. This act shall take effect immediately and have prospective effect only.

Approved October 26, 1994.

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## CHAPTER 124

AN ACT concerning service charges by authorities for certain checks which are returned for insufficient funds and supplementing chapter 14A and chapter 14B of Title 40 of the Revised Statutes.

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

**C.40:14A-7.4 Service charge by sewerage authority for returned check.**

1. a. A sewerage authority created pursuant to the provisions of P.L.1946, c.138 (C.40:14A-1 et seq.) may, by resolution, provide for the imposition of a service charge to be added to any account owing to the authority, if payment tendered on the account was by a check or other written instrument which was returned for insufficient funds.

b. The service charge for a check or other written instrument returned for insufficient funds shall be determined and set by resolution from time to time, but shall not exceed \$20 per check or other written instrument.

c. Any service charge authorized by this section shall be collected in the same manner prescribed by law for the collection of the account for which the check or other written instrument was tendered. In addition, the authority may require future payments to be tendered in cash or by certified or cashier's check.

**C.40:14B-20.2 Service charge by utility authority for returned check.**

2. a. A utilities authority created pursuant to the provisions of P.L.1957, c.183 (C.40:14B-1 et seq.) may, by resolution, provide for the imposition of a service charge to be added to any account owing to

the authority, if payment tendered on the account was by a check or other written instrument which was returned for insufficient funds.

b. The service charge for a check or other written instrument returned for insufficient funds shall be determined and set by resolution from time to time, but shall not exceed \$20 per check or other written instrument.

c. Any service charge authorized by this section shall be collected in the same manner prescribed by law for the collection of the account for which the check or other written instrument was tendered. In addition, the authority may require future payments to be tendered in cash or by certified or cashier's check.

3. This act shall take effect immediately.

Approved October 26, 1994.

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## CHAPTER 125

AN ACT concerning county open space and farmland preservation trust funds and supplementing P.L.1989, c.30 (C.40:12-16 et seq.).

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

**C.40:12-19.1 County open space and farmland preservation trust fund, distribution.**

1. a. The governing body of any county in which the voters of the county have approved a proposition in accordance with section 1 of P.L.1989, c.30 (C.40:12-16) may adopt a resolution authorizing the distribution of monies deposited in the county open space and farmland preservation trust fund, in such portions as deemed appropriate, to municipalities within the county or to charitable conservancies, to be used by those municipalities or charitable conservancies for the acquisition of open space or farmland located in the county in accordance with the provisions, conditions, and requirements of P.L.1989, c.30 (C.40:12-16 et seq.), provided that any municipality or charitable conservancy receiving such monies has presented a plan to the county documenting the proposed use of the lands to be acquired.

b. Land or water areas, and any improvements thereon, acquired by a municipality pursuant to this section shall be held in a municipal open space and farmland preservation trust and shall be used exclusively for purposes authorized pursuant to P.L.1989, c.30 (C.40:12-16 et seq.).

c. The governing body of the municipality acquiring land or water areas, and any improvements thereon, for open space using funds received pursuant to this section shall have full control of the open space and may adopt an ordinance providing for (1) suitable rules, regulations, and bylaws for use of the open space, (2) the enforcement of those rules, regulations and bylaws, and (3) when appropriate, the charging and collection of reasonable fees for use of the open space or for activities conducted thereon.

d. In order to qualify to receive funds from a county open space and farmland preservation trust fund for the acquisition of open space or farmland pursuant to this section, the board of directors, board of trustees, or other governing body, as appropriate, of an applying charitable conservancy shall:

(1) demonstrate to the governing body of the county that it qualifies as a charitable conservancy for the purposes of P.L.1979, c.378 (C.13:8B-1 et seq.);

(2) agree to use the funds only to acquire open space or farmland located in the county;

(3) agree to make and keep the open space accessible to the public, unless the governing body of the county determines that public accessibility would be detrimental to the lands or waters, or any improvements thereon, or to any natural resources associated therewith;

(4) agree not to sell, lease, exchange, or donate the open space or farmland acquired pursuant to this section except upon approval of the governing body of the county under such conditions as the governing body may establish; and

(5) agree to execute and donate to the county at no charge (a) a conservation restriction or historic preservation restriction, as the case may be, pursuant to P.L.1979, c.378 (C.13:8B-1 et seq.), on any open space to be acquired using funds received from the county open space and farmland preservation trust fund pursuant to this section, or (b) a development easement on any farmland to be acquired using funds received from the county open space and farmland preservation trust fund pursuant to this section.

e. For the purposes of this section:

“Charitable conservancy” means a charitable conservancy as that term is defined in section 2 of P.L.1979, c.378 (C.13:8B-2); and

“Development easement” means a development easement as that term is defined in section 3 of P.L.1983, c.32 (C.4:1C-13).

2. This act shall take effect immediately and shall also apply retroactively to any monies raised prior to the effective date of

this act through a proposition approved by the voters of a county pursuant to section 1 of P.L.1989, c.30 (C.40:12-16).

Approved October 26, 1994.

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## CHAPTER 126

AN ACT concerning material witnesses, enacting a new chapter 104 of Title 2C of the New Jersey Statutes and repealing parts of the statutory law.

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

1. A new chapter 104 is added to Title 2C of the New Jersey Statutes as follows:

**Definitions.**

2C:104-1. Definitions.

a. A material witness is a person who has information material to the prosecution or defense of a crime.

b. A material witness order is a court order fixing conditions necessary to secure the appearance of a person who is unlikely to respond to a subpoena and who has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime or a criminal investigation before a grand jury.

Source: New.

**Application for material witness order.**

2C:104-2. Application for material witness order.

a. The Attorney General, county prosecutor or defendant in a criminal action may apply to a judge of the Superior Court for an order compelling a person to appear at a material witness hearing, if there is probable cause to believe that: (1) the person has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime or a criminal investigation before a grand jury and (2) the person is unlikely to respond to a subpoena. The application may be accompanied by an application for an arrest warrant when there is probable cause to believe that the person will not appear at the material witness hearing unless arrested.

b. The application shall include a copy of any pending indictment, complaint or accusation and an affidavit containing: (1) the name and address of the person alleged to be a material witness, (2) a summary

of the facts believed to be known by the alleged material witness and the relevance to the criminal action or investigation, (3) a summary of the facts supporting the belief that the person possesses information material to the pending criminal action or investigation, and (4) a summary of the facts supporting the claim that the alleged material witness is unlikely to respond to a subpoena.

c. If the application requests an arrest warrant, the affidavit shall set forth why immediate arrest is necessary.

Source: 2A:162-2.

**Order to appear.**

2C:104-3. Order to appear.

a. If there is probable cause to believe that a material witness order may issue against the person named in the application, the judge may order the person to appear at a hearing to determine whether the person should be adjudged a material witness.

b. The order and a copy of the application shall be served personally upon the alleged material witness at least 48 hours before the hearing, unless the judge adjusts the time period for good cause, and shall advise the person of:

(1) the time and place of the hearing; and

(2) the right to be represented by an attorney and to have an attorney appointed if the person cannot afford one.

Source: New.

**Arrest with warrant.**

2C:104-4. Arrest With Warrant.

a. If there is clear and convincing evidence that the person named in the application will not be available as a witness unless immediately arrested, the judge may issue an arrest warrant. The arrest warrant shall require that the person be brought before the court immediately after arrest. If the arrest does not take place during regular court hours, the person shall be brought to the emergency-duty Superior Court judge.

b. The judge shall inform the person of:

(1) the reason for arrest;

(2) the time and place of the hearing to determine whether the person is a material witness; and

(3) the right to an attorney and to have an attorney appointed if the person cannot afford one.

c. The judge shall set conditions for release, or if there is clear and convincing evidence that the person will not be available as a witness unless confined, the judge may order the person confined



until the material witness hearing which shall take place within 48 hours of the arrest.

Source: 2A:162-2.

**Arrest without warrant.**

**2C:104-5. Arrest Without Warrant.**

a. A law enforcement officer may arrest an alleged material witness without a warrant only if the arrest occurs prior to the filing of an indictment, accusation or complaint for a crime or the initiation of a criminal investigation before a grand jury, and if the officer has probable cause to believe that:

- (1) a crime has been committed;
- (2) the alleged material witness has information material to the prosecution of that crime;
- (3) the alleged material witness will refuse to cooperate with the officer in the investigation of that crime; and
- (4) the delay necessary to obtain an arrest warrant or order to appear would result in the unavailability of the alleged material witness.

b. Following the warrantless arrest of an alleged material witness, the law enforcement officer shall bring the person immediately before a judge. If court is not in session, the officer shall immediately bring the person before the emergency-duty Superior Court judge. The judge shall determine whether there is probable cause to believe that the person is a material witness of a crime and, if an indictment, accusation or complaint for that crime has not issued or if a grand jury has not commenced a criminal investigation of that crime, the judge shall determine whether there is probable cause to believe that, within 48 hours of the arrest, an indictment, accusation or complaint will issue or a grand jury investigation will commence. The judge then shall proceed as if an application for a warrant has been made under N.J.S.2C:104-4.

Source: New.

**Material witness hearing.**

**2C:104-6. Material witness hearing.**

a. At the material witness hearing, the following rights shall be afforded to the person:

- (1) the right to be represented by an attorney and to have an attorney appointed if the person cannot afford one;
- (2) the right to be heard and to present witnesses and evidence;
- (3) the right to have all of the evidence considered by the court in support of the application; and
- (4) the right to confront and cross-examine witnesses.

b. If the judge finds that there is probable cause to believe that the person is unlikely to respond to a subpoena and has information material to the prosecution or defense of a pending indictment, accusation or complaint for a crime, or a criminal investigation before a grand jury, the judge shall determine that the person is a material witness and may set the conditions of release of the material witness.

c. If the judge finds by clear and convincing evidence that confinement is the only method that will secure the appearance of the material witness, the judge may order the confinement of the material witness.

d. The judge shall set forth the facts and reasons in support of the material witness order on the record.

Source: 2A:162-2.

**Conditions of release; confinement.**

2C:104-7. Conditions of release; confinement.

a. A confined person shall not be held in jail or prison, but shall be lodged in comfortable quarters and served ordinary food.

b. The conditions of release for a material witness or for a person held on an application for a material witness order shall be the least restrictive to effectuate the appearance of the material witness. A judge may:

(1) place the witness in the custody of a designated person or organization agreeing to supervise the person;

(2) restrict the travel of the person;

(3) require the person to report;

(4) set bail; or

(5) impose other reasonable restrictions on the material witness.

c. A person confined shall be paid \$40.00 per day, and when the interests of justice require, the judge may order additional payment not exceeding the actual financial loss resulting from the confinement. The party obtaining the material witness order bears the cost of confinement and payment unless the party is indigent.

Source: 2A:162-3, 2A:162-4.

**Deposition.**

2C:104-8. Deposition.

A material witness may apply to the Superior Court for an order directing that a deposition be taken to preserve the witness's testimony. After the deposition is taken, the judge shall vacate the terms of confinement contained in the material witness order and impose the least restrictive conditions to secure the appearance of the material witness.

Source: New.

**Orders appealable.**

2C:104-9. Orders appealable.

A material witness order shall constitute a final order for purposes of appeal, but, on motion of the material witness, may be reconsidered at any time by the court which entered the order.

Source: New.

**Repealer.**

2. The following are repealed:

N.J.S.2A:162-2 through 2A:162-4 inclusive.

3. This act shall take effect immediately.

Approved October 26, 1994.

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**CHAPTER 127**

AN ACT concerning the imposition of extended terms of imprisonment in certain cases and amending N.J.S.2C:43-7 and N.J.S.2C:44-3.

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

1. N.J.S.2C:43-7 is amended to read as follows:

**Sentence of imprisonment for crime; extended terms.**

2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

a. In the cases designated in section 2C:44-3, a person who has been convicted of a crime may be sentenced to an extended term of imprisonment, as follows:

(1) In case of aggravated manslaughter sentenced under subsection c. of N.J.S.2C:11-4; kidnapping when sentenced as a crime of the first degree under paragraph (1) of subsection c. of 2C:13-1; or aggravated sexual assault if the person is eligible for an extended term pursuant to the provisions of subsection g. of N.J.S.2C:44-3 for a specific term of years which shall be between 30 years and life imprisonment;

(2) Except for the crime of murder and except as provided in paragraph (1) of this subsection, in the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 20 years and life imprisonment;

(3) In the case of a crime of the second degree, for a term which shall be fixed by the court between 10 and 20 years;

(4) In the case of a crime of the third degree, for a term which shall be fixed by the court between five and 10 years;

(5) In the case of a crime of the fourth degree pursuant to 2C:43-6c., 2C:44-3d., 2C:44-3e. for a term of five years, and in the case of a crime of the fourth degree pursuant to 2C:43-6f. and 2C:43-6g. for a term which shall be fixed by the court between three and five years.

b. As part of a sentence for an extended term and notwithstanding the provisions of 2C:43-9, the court may fix a minimum term not to exceed one-half of the term set pursuant to subsection a. during which the defendant shall not be eligible for parole or a term of 25 years during which time the defendant shall not be eligible for parole where the sentence imposed was life imprisonment; provided that no defendant shall be eligible for parole at a date earlier than otherwise provided by the law governing parole.

c. In the case of a person sentenced to an extended term pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall impose a sentence within the ranges permitted by 2C:43-7a.(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall, except as may be specifically provided by N.J.S.2C:43-6f., be fixed at or between one-third and one-half of the sentence imposed by the court or five years, whichever is greater, during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted for a violation of N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.

d. In the case of a person sentenced to an extended term pursuant to N.J.S.2C:43-6g., the court shall impose a sentence within the ranges permitted by N.J.S.2C:43-7a(2), (3), (4) or (5) according to the degree or nature of the crime for which the defendant is being sentenced, which sentence shall include a minimum term which shall be fixed at 15 years for a crime of the first or second degree, eight years for a crime of the third degree, or five years for a crime of the fourth degree during which the defendant shall not be eligible for parole. Where the sentence imposed is life imprisonment, the court shall impose a minimum term of 25 years during which the defendant shall not be eligible for parole, except that where the term of life imprisonment is imposed on a person convicted of a violation of N.J.S.2C:35-3, the term of parole eligibility shall be 30 years.

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;

(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; or

(k) The victim was less than 14 years old.

(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 October 31, 1994.

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## CHAPTER 133

AN ACT concerning registration of sex offenders, supplementing Title 2C of the New Jersey Statutes and amending N.J.S.2C:52-2.

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

**C.2C:7-1 Findings, declarations.**

1. The Legislature finds and declares:

a. The danger of recidivism posed by sex offenders and offenders who commit other predatory acts against children, and the dangers posed by persons who prey on others as a result of mental illness, require a system of registration that will permit

law enforcement officials to identify and alert the public when necessary for the public safety.

b. A system of registration of sex offenders and offenders who commit other predatory acts against children will provide law enforcement with additional information critical to preventing and promptly resolving incidents involving sexual abuse and missing persons.

**C.2C:7-2 Registration of sex offender; definition.**

2. a. A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section. A person who fails to register as required under this act shall be guilty of a crime of the fourth degree.

b. For the purposes of this act a sex offense shall include the following:

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1 or an attempt to commit any of these crimes if the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3b. if the victim is a minor; kidnapping pursuant to N.J.S.2C:13-1, criminal restraint pursuant to N.J.S.2C:13-2, or false imprisonment pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender is not the parent of the victim; or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.

c. A person required to register under the provisions of this act shall do so on forms to be provided by the designated registering agency as follows:

(1) A person who is required to register and who is under supervision in the community on probation, parole, furlough, work release, or a similar program, shall register at the time the person is placed under supervision or no later than 120 days after the effective date of this act, whichever is later, in accordance with procedures established by the Department of Corrections, the Department of Human Services or the Administrative Office of the Courts, whichever is responsible for supervision;

(2) A person confined in a correctional or juvenile facility or involuntarily committed who is required to register shall register prior to release in accordance with procedures established by the Department of Corrections or the Department of Human Services;

(3) A person moving to or returning to this State from another jurisdiction shall register with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police within 120 days of the effective date of this act or 70 days of first residing in or returning to a municipality in this State, whichever is later;

(4) A person required to register on the basis of a conviction prior to the effective date who is not confined or under supervision on the effective date of this act shall register within 120 days of the effective date of this act with the chief law enforcement officer of the municipality in which the person will reside or, if the municipality does not have a local police force, the Superintendent of State Police.

d. Upon a change of address, a person shall notify the law enforcement agency with which the person is registered and must re-register with the appropriate law enforcement agency no less than 10 days before he intends to first reside at his new address.

e. A person required to register under paragraph (1) of subsection b. of this section or under paragraph (3) of subsection b. due to a sentence imposed on the basis of criteria similar to the criteria set forth in paragraph (1) of subsection b. shall verify his



address with the appropriate law enforcement agency every 90 days in a manner prescribed by the Attorney General. A person required to register under paragraph (2) of subsection b. of this section or under paragraph (3) of subsection b. on the basis of a conviction for an offense similar to an offense enumerated in paragraph (2) of subsection b. shall verify his address annually in a manner prescribed by the Attorney General. One year after the effective date of this act, the Attorney General shall review, evaluate and, if warranted, modify pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) the verification requirement.

f. A person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

**C.2C:7-3 Notice of obligation to register.**

3. Notice of the obligation to register shall be provided as follows:

(1) A court imposing a sentence, disposition or order of commitment following acquittal by reason of insanity shall notify the defendant of the obligation to register pursuant to section 2 of this act.

(2) The Department of Corrections, the Administrative Office of the Courts and the Department of Human Services shall (a) establish procedures for notifying persons under their supervision of the obligation to register pursuant to this act and (b) establish procedures for registration by persons with the appropriate law enforcement agency who are under supervision in the community on probation, parole, furlough, work release or similar program outside the facility, and registration with the appropriate law enforcement agency of persons who are released from the facility in which they are confined without supervision.

(3) The Division of Motor Vehicles in the Department of Law and Public Safety shall provide notice of the obligation to register pursuant to this section in connection with each application for a license to operate a motor vehicle and each application for an identification card issued pursuant to section 2 of P.L.1980, c.47 (C.39:3-29.3).

(4) The Attorney General shall cause notice of the obligation to register to be published in a manner reasonably calculated to reach the general public within 30 days of the effective date of this act.

**C.2C:7-4 Forms of registration.**

4. a. Within 60 days of the effective date of this act, the Superintendent of State Police, with the approval of the Attorney General, shall prepare the form of registration statement as required in subsection b. of this section and shall provide such forms to each organized full-time municipal police department, the Department of Corrections, the Administrative Office of the Courts and the Department of Human Services.

b. The form of registration required by this act shall include:

(1) A statement in writing signed by the person required to register acknowledging that the person has been advised of the duty to register and reregister imposed by this act and including the person's name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence, address of any current temporary residence, date and place of employment;

(2) Date and place of each conviction, adjudication or acquittal by reason of insanity, indictment number, fingerprints, and a brief description of the crime or crimes for which registration is required; and

(3) Any other information that the Attorney General deems necessary to assess risk of future commission of a crime, including criminal and corrections records, nonprivileged personnel, treatment, and abuse registry records, and evidentiary genetic markers when available.

c. Within three days of receipt of a registration pursuant to subsection c. of section 2 of this act, the registering agency shall forward the statement and any other required information to the prosecutor who shall, as soon as practicable, transmit the form of registration to the Superintendent of State Police, and, if the registrant will reside in a different county, to the prosecutor of the county in which the person will reside. The prosecutor of the county in which the person will reside shall transmit the form of registration to the law enforcement agency responsible for the municipality in which the person will reside and other appropriate law enforcement agencies. The superintendent shall promptly transmit the conviction data and fingerprints to the Federal Bureau of Investigation.

d. The Superintendent of State Police shall maintain a central registry of registrations provided pursuant to this act.

**C.2C:7-5 Records; immunity.**

5. a. Records maintained pursuant to this act shall be open to any law enforcement agency in this State, the United States or

any other state. Law enforcement agencies in this State shall be authorized to release relevant and necessary information regarding sex offenders to the public when the release of the information is necessary for public protection in accordance with the provisions of P.L.1994, c.128 (C.2C:7-6 et seq.).

b. An elected public official, public employee, or public agency is immune from civil liability for damages for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

c. Nothing in this act shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for failing to release information as authorized in subsection d. of this section.

d. Nothing in this section shall be construed to prevent law enforcement officers from notifying members of the public exposed to danger of any persons that pose a danger under circumstances that are not enumerated in this act.

6. 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:13-6 (Luring or Enticing); section 2C:14-2 (Aggravated Sexual Assault); section 2C:14-3a (Aggravated Criminal Sexual Contact); if the victim is a minor, section 2C:14-3b (Criminal Sexual Contact); if the victim is a minor and the offender is not the parent of the victim, section 2C:13-2 (Criminal Restraint) or section 2C:13-3 (False Imprisonment); section 2C:15-1 (Robbery); section 2C:17-1 (Arson and Related Offenses); section 2C:24-4a. (Endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child); section 2C:24-4b(4) (Endangering the welfare of a child); 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.

7. This act shall take effect immediately.

Approved October 31, 1994.

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#### CHAPTER 134

AN ACT concerning procedures for civil commitment of mentally ill and dangerous sexual offenders and other offenders and revising various parts of the statutory law.

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

1. The Legislature finds and declares that:
  - a. A small but dangerous group of sexual offenders and other violent offenders suffer from mental illness which renders them dangerous to others and for the protection of the public they are in need of involuntary civil commitment for treatment.
  - b. The statutory standards for involuntary civil commitment define "mental illness" in terms of its impact on impairment of judgment, behavior and capacity to recognize reality. The statutory standard provides for involuntary commitment when such mental illness causes the person to be dangerous to self or dangerous to others or property. Recommendations concerning commitment too often are based on the presence or absence of psychosis.
  - c. To ensure the public is not denied the protection that the Legislature intended to provide in enacting a law that calls for the involuntary civil commitment of the dangerous mentally ill, it is necessary to reaffirm and clarify the statutory standards for civil commitment and to revise the procedures governing release of offenders and civil commitment in order to ensure that the full benefits of the civil commitment law are realized.

2. N.J.S.2C:47-3 is amended to read as follows:

**Disposition.**

2C:47-3. Disposition.

- a. If the report of the examination reveals that the offender's conduct was characterized by a pattern of repetitive, compulsive

behavior, the court shall determine whether the offender's conduct was so characterized and shall record its findings on the judgment of conviction.

b. If the court finds that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, the court may, upon the recommendation of the Adult Diagnostic and Treatment Center, sentence the offender to the Center for a program of specialized treatment for his mental condition or place the offender on probation with the requirement, as a condition of probation, that he receive outpatient psychological or psychiatric treatment as prescribed.

c. A sentence of incarceration or probation imposed pursuant to subsection b. of this section shall be set in accordance with chapters 43, 44 and 45 of this code.

d. The court shall impose sentence in accordance with chapters 43, 44 and 45 of this Title and not as provided in subsection b. of this section:

(1) If it shall appear from the report of such examination made of such person that the offender's conduct was not characterized by a pattern of repetitive, compulsive behavior; or

(2) If the report of the examination does not recommend that the offender be sentenced to the Adult Diagnostic and Treatment Center for treatment or placed on probation conditioned upon receipt of treatment.

e. The court may, in its discretion, sentence an offender who is eligible for sentence pursuant to subsection b. of this section in accordance with chapters 43, 44 and 45 of this Title.

3. N.J.S.2C:47-5 is amended to read as follows:

**Parole.**

2C:47-5. Parole.

a. Any person committed to confinement under the terms of this chapter shall be released under parole supervision when it shall appear to the satisfaction of the State Parole Board, after recommendation by a special classification review board appointed by the commissioner that such person is capable of making an acceptable social adjustment in the community.

b. The Chief Executive Officer of the Adult Diagnostic and Treatment Center shall report in writing at least semiannually to the special classification review board concerning the physical and psychological condition of such person with a recommendation as to his continued confinement or consideration for release on parole.

c. Any person paroled pursuant to this section shall be subject to the provisions of Title 30 of the Revised Statutes governing parole and the regulations promulgated pursuant thereto.

d. When a person confined under the terms of this chapter has not been paroled in accordance with subsection a. of this section and is scheduled for release, not less than 90 days prior to the date of the person's scheduled release the Chief Executive Officer shall:

(1) Notify the Attorney General and the prosecutor of the county from which the person was committed of the scheduled release;

(2) Provide the Attorney General and the county prosecutor with the officer's opinion as to whether the person may be "in need of involuntary commitment" within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2); and

(3) Without regard to classification as confidential pursuant to regulations of the State Parole Board or the Department of Corrections, provide the Attorney General and county prosecutor with all reports, records and assessments relevant to determining whether the person is "in need of involuntary commitment." All information received shall be deemed confidential and shall be disclosed only as provided in section 4 of P.L.1994, c.134 (C.30:4-82.4).

e. Upon receipt of the notice, advice and information required by subsection d. of this section, the Attorney General or county prosecutor shall proceed as provided in section 4 of P.L.1994, c.134 (C.30:4-82.4).

**C.30:4-82.4 Procedures for inmates "in need of involuntary commitment."**

4. a. In order to ensure that adult and juvenile inmates who are dangerous to themselves or others because of mental illness and who are "in need of involuntary commitment" within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2), are not released without appropriate supervision and treatment, the board, the Commissioner of the Department of Corrections, the Attorney General and county prosecutors shall follow the procedures set forth in this section.

b. When an adult or juvenile inmate is scheduled for release due to expiration of the inmate's maximum term, the commissioner shall notify the Attorney General and the prosecutor of the county from which the person was committed if:

(1) The adult inmate's term includes a sentence imposed for conviction of aggravated sexual assault, sexual assault or aggravated criminal sexual contact and the court imposing sentence found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior; or

(2) The parole board or the superintendent of the facility in which the inmate has been confined has advised the commissioner that the conduct of the inmate during the period of confinement, the inmate's mental condition or the inmate's past history indicates that the inmate may be "in need of involuntary commitment" within the meaning of section 2 of P.L.1987, c.116 (C.30:4-27.2).

c. Notice required by subsection b. shall be given no less than 90 days before the date on which the inmate's maximum term is scheduled to expire.

d. When such notice is given, the board or the commissioner shall provide the Attorney General and county prosecutor with all information relevant to a determination of whether the inmate may be "in need of involuntary commitment," including, without regard to classification as confidential pursuant to regulations of the board or of the Department of Corrections, any preparole report, psychological and medical records, any statement of the reasons for denial of parole and, if applicable, a statement of the reasons for the determination that the inmate may be "in need of involuntary commitment."

e. If the Attorney General or county prosecutor determines, on the basis of the information provided pursuant to this section or N.J.S.2C:47-5, that the inmate may be "in need of involuntary commitment," the Commissioner of Corrections, upon request of the Attorney General or county prosecutor shall:

(1) Permit persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate in the institution in which he is confined; or

(2) Pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2), arrange for persons qualified to execute clinical certificates necessary for civil commitment to examine the inmate.

f. In the interests of the public safety and the well-being of the inmate, the Attorney General or county prosecutor may exercise discretion to obtain an assessment of the inmate's condition by one or more of the means set forth in subsection e. of this section.

g. The Attorney General or county prosecutor shall provide a psychiatrist or physician assessing or examining an inmate pursuant to this section with all information relevant to the inmate's need of involuntary commitment, including information concerning the inmate's condition, history, recent behavior and any recent act or threat. Any person who assesses or examines an inmate pursuant to this section shall provide the Attorney General and county prosecutor with a written report detailing the person's findings and conclusions.



h. (1) All information, documents and records concerning the inmate's mental condition or classified as confidential pursuant to regulations of the board or of the Department of Corrections that are received or provided pursuant to this section or N.J.S.2C:47-5 shall be deemed confidential.

(2) Unless authorized or required by court order or except as required in the course of judicial proceedings relating to the inmate's commitment or release, disclosure of such information, documents and records shall be limited to professionals evaluating the inmate's condition pursuant to this section, the Attorney General, county prosecutor and members of their respective staffs as necessary to the performance of duties imposed pursuant to this section.

i. Any person acting in good faith who has provided information relevant to an inmate's need of involuntary commitment or has taken good faith steps to assess an inmate's need of involuntary commitment is immune from civil and criminal liability.

5. Section 2 of P.L.1987, c.116 (C.30:4-27.2) is amended to read as follows:

**C.30:4-27.2 Definitions.**

2. As used in this act:

a. "Chief executive officer" means the person who is the chief administrative officer of an institution or psychiatric facility.

b. "Clinical certificate" means a form prepared by the division and approved by the Administrative Office of the Courts, that is completed by the psychiatrist or other physician who has examined the person who is subject to commitment within three days of presenting the person for admission to a facility for treatment, and which states that the person is in need of involuntary commitment. The form shall also state the specific facts upon which the examining physician has based his conclusion and shall be certified in accordance with the Rules of the Court. A clinical certificate may not be executed by a person who is a relative by blood or marriage to the person who is being screened.

c. "Clinical director" means the person who is designated by the director or chief executive officer to organize and supervise the clinical services provided in a screening service, short-term care or psychiatric facility. The clinical director shall be a psychiatrist, however, those persons currently serving in the capacity will not be affected by this provision. This provision shall not alter any current civil service laws designating the qualifications of such position.

d. "Commissioner" means the Commissioner of the Department of Human Services.

e. "County counsel" means the chief legal officer or advisor of the governing body of a county.

f. "Court" means the Superior Court or a municipal court.

g. "Custody" means the right and responsibility to ensure the provision of care and supervision.

h. "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available.

i. "Dangerous to others or property" means that by reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior and any recent act or threat.

j. "Department" means the Department of Human Services.

k. "Director" means the chief administrative officer of a screening service, a short-term care facility or a special psychiatric hospital.

l. "Division" means the Division of Mental Health and Hospitals in the Department of Human Services.

m. "In need of involuntary commitment" means that an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs.

n. "Institution" means any State or county facility providing inpatient care, supervision and treatment for the mentally retarded; except that with respect to the maintenance provisions of Title 30 of the Revised Statutes, institution also means any psychiatric facility for the treatment of the mentally ill.

o. "Mental health agency or facility" means a legal entity which receives funds from the State, county or federal government to provide mental health services.

p. "Mental health screener" means a psychiatrist, psychologist, social worker, registered professional nurse or other individual trained to do outreach only for the purposes of psychological assessment who is employed by a screening service and possesses the license, academic training or experience, as required by the commissioner pursuant to regulation; except that a psychiatrist and a State licensed clinical psychologist who meet the requirements for mental health screener shall not have to comply with any additional requirements adopted by the commissioner.

q. "Mental hospital" means, for the purposes of the payment and maintenance provisions of Title 30 of the Revised Statutes, a psychiatric facility.

r. "Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

s. "Patient" means a person over the age of 18 who has been admitted to, but not discharged from a short-term care or psychiatric facility.

t. "Physician" means a person who is licensed to practice medicine in any one of the United States or its territories, or the District of Columbia.

u. "Psychiatric facility" means a State psychiatric hospital listed in R.S.30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital.

v. "Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

w. "Psychiatric unit of a general hospital" means an inpatient unit of a general hospital that restricts its services to the care and treatment of the mentally ill who are admitted on a voluntary basis.

x. "Psychologist" means a person who is licensed as a psychologist by the New Jersey Board of Psychological Examiners.

y. "Screening certificate" means a clinical certificate executed by a psychiatrist or other physician affiliated with a screening service.

z. "Screening service" means a public or private ambulatory care service designated by the commissioner, which provides mental health services including assessment, emergency and referral services to mentally ill persons in a specified geographic area.

aa. "Screening outreach visit" means an evaluation provided by a mental health screener wherever the person may be when clinically relevant information indicates the person may need involuntary commitment and is unable or unwilling to come to a screening service.

bb. "Short-term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self or dangerous to others or property. A short-term care facility is so designated by the commissioner and is authorized by the commissioner to serve persons from a specified geographic area. A short-term care facility may be a part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) and in accordance with standards developed jointly with the Commissioner of Human Services.

cc. "Special psychiatric hospital" means a public or private hospital licensed by the Department of Health to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment and rehabilitation services to persons who are mentally ill.

dd. "Treatment team" means one or more persons, including at least one psychiatrist or physician, and may include a psychologist, social worker, nurse and other appropriate services providers. A treatment team provides mental health services to a patient of a screening service, short-term care or psychiatric facility.

ee. "Voluntary admission" means that adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and is willing to be admitted to a facility voluntarily for care, needs care at a short-term care or psychiatric facility because other facilities or services are not appropriate or available to meet the person's mental health needs. A person may also be voluntarily admitted to a psychiatric facility if his mental illness presents a substantial likelihood of rapid deterioration in functioning in the near future, there are no appropriate community alternatives available and the psychiatric facility can admit the person and remain within its rated capacity.

ff. "County adjuster" means the person appointed pursuant to R.S.30:4-34.

6. Section 10 of P.L.1987, c.116 (C.30:4-27.10) is amended to read as follows:

**C.30:4-27.10 Court proceedings.**

10. a. A short-term care or psychiatric facility or a special psychiatric hospital shall initiate court proceedings for involuntary commitment by submitting to the court a clinical certificate completed by a psychiatrist on the patient's treatment team and the screening certificate which authorized admission of the patient to the facility; provided, however, that both certificates shall not be signed by the same psychiatrist unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

b. Court proceedings for the involuntary commitment of any person not referred by a screening service may be initiated by the submission to the court of two clinical certificates, at least one of which is prepared by a psychiatrist. The person shall not be involuntarily committed before the court issues a temporary court order.

c. A court proceeding for involuntary commitment of an inmate who is scheduled for release upon expiration of a maximum term of incarceration shall be initiated by the Attorney General or county prosecutor by submission to the court of two clinical certificates, at least one of which is prepared by a psychiatrist.

d. The Attorney General, in exercise of the State's authority as *parens patriae*, may initiate a court proceeding for the involuntary commitment of any person in accordance with the procedures set forth in subsection a. or b. of this section. When the Attorney General determines that the public safety requires initiation of a proceeding pursuant to subsection b. of this section, the Attorney General may apply to the court for an order compelling the psychiatric evaluation of the person. The court shall grant the Attorney General's application if the court finds that there is reasonable cause to believe that the person may be in need of involuntary commitment. The Attorney General may delegate the authority granted pursuant to this subsection, on a case by case basis, to the county prosecutor.

e. Any person who is a relative by blood or marriage of the person being screened who executes a clinical certificate, or any person who signs a clinical certificate for any purpose or motive

other than for purposes of care, treatment and confinement of a person in need of involuntary commitment, shall be guilty of a crime of the fourth degree.

f. Upon receiving these documents the court shall immediately review them in order to determine whether there is probable cause to believe that the person is in need of involuntary commitment.

g. If the court finds that there is probable cause to believe that the person, other than a person whose commitment is sought pursuant to subsection c. of this section, is in need of involuntary commitment, it shall issue a temporary order authorizing the admission to or retention of the person in the custody of the facility pending a final hearing.

h. If the court finds that there is probable cause to believe that a person whose commitment is sought pursuant to subsection c. of this section is in need of involuntary commitment, it shall issue an order setting a date for a final hearing and authorizing the Commissioner of the Department of Corrections to arrange for temporary commitment pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2) to the Forensic Psychiatric Hospital in Trenton or other facility designated for the criminally insane pending the final hearing and prior to the expiration of the person's term. The order shall specifically provide for transfer of custody to the Forensic Psychiatric Hospital in Trenton or other facility designated for the criminally insane if the person's maximum term will expire prior to the final hearing.

i. In the case of a person committed to a short-term care facility or special psychiatric hospital, after the facility's treatment team conducts a mental and physical examination, administers appropriate treatment and prepares a discharge assessment, the facility may transfer the patient to a psychiatric facility prior to the final hearing; provided that: (1) the patient, his family and his attorney are given 24 hours' advance notice of the pending transfer; and (2) the transfer is accomplished in a manner which will give the receiving facility adequate time to examine the patient, become familiar with his behavior and condition and prepare for the hearing. In no event shall the transfer be made less than five days prior to the date of the hearing unless an unexpected transfer is dictated by a change in the person's clinical condition.

7. Section 12 of P.L.1987, c.116 (C.30:4-27.12.) is amended to read as follows:

**C.30:4-27.12 Court hearing.**

12. a. A patient who is involuntarily committed to a short-term care or psychiatric facility or special psychiatric hospital shall receive a court hearing with respect to the issue of continuing need for involuntary commitment within 20 days from initial inpatient admission to the facility unless the patient has been administratively discharged from the facility pursuant to section 17 of P.L.1987, c.116 (C.30:4-27.17). However, if a person is involuntarily committed pursuant to subsection c. or d. of section 10 of P.L.1987, c.116 (C.30:4-27.10), that person immediately shall be committed to the Forensic Psychiatric Hospital in Trenton or other facility designated for the criminally insane for the duration of the 20 day waiting period.

b. Except as provided in subsection c. of this section, the assigned county counsel is responsible for presenting the case for the patient's involuntary commitment to the court, unless the county adjuster is licensed to practice law in this State, in which case the county adjuster shall present the case for the patient's involuntary commitment to the court.

c. Notwithstanding the provisions of subsection b. of this section and upon notice to the county adjuster:

(1) The Attorney General, or the county prosecutor acting at the request of the Attorney General, may supersede the county counsel or county adjuster and assume responsibility for presenting any case for involuntary commitment or may elect to participate with the county counsel or county adjuster in presenting any such case; and

(2) The county prosecutor may supersede the county counsel or county adjuster and assume responsibility for presenting any case for involuntary commitment initiated by the county prosecutor pursuant to subsection c. of section 10 of P.L.1987, c.116 (C.30:4-27.10) or may elect to participate with the county counsel in the presentation of any such case.

d. A patient subject to involuntary commitment shall have counsel present at the hearing and shall not be permitted to appear at the hearing without counsel.

8. Section 13 of P.L.1987, c.116 (C.30:4-27.13) is amended to read as follows:

**C.30:4-27.13 Notice of hearing.**

13. a. At least 10 days prior to a court hearing, the county adjuster of the admitting county or the Attorney General or county prosecutor if presenting the case for the patient's involuntary commitment, shall cause notice of the court hearing to be served upon the patient, the patient's guardian if any, the patient's next-of-kin, the patient's attorney, the director, chief executive officer, or other individual who has custody of the patient, the county adjuster of the county in which the patient has legal settlement and any other individual specified by the court. The notice shall contain the date, time and location of the court hearing. The patient and the patient's attorney shall also receive copies of the clinical certificates and supporting documents, the temporary court order and a statement of the patient's rights at the court hearing.

b. A psychiatrist on the patient's treatment team who has conducted a personal examination of the patient as close to the court hearing date as possible, but in no event more than five calendar days prior to the court hearing, shall testify at the hearing to the clinical basis for the need for involuntary commitment. Other members of the patient's treatment team and any other witness with relevant information offered by the patient or the persons presenting the case for civil commitment shall also be permitted to testify at the hearing.

c. The patient's next-of-kin may attend and testify at the court hearing if the court so determines.

d. The court shall transcribe the court hearing and arrange for the payment of expenses related thereto in the same manner as for other court proceedings.

9. Section 15 of P.L.1987, c.116 (C.30:4-27.15) is amended to read as follows:

**C.30:4-27.15 Court findings.**

15. a. If the court finds by clear and convincing evidence that the patient needs continued involuntary commitment, it shall issue an order authorizing the involuntary commitment of the patient and shall schedule a subsequent court hearing in the event the patient is not administratively discharged pursuant to section 17 of P.L.1987, c.116 (C.30:4-27.17) prior thereto.

b. If the court finds that the patient does not need continued involuntary commitment, the court shall so order. A patient who is serving a term of incarceration shall be returned to the appropriate State, county or local authority to complete service of the



term of incarceration imposed until released in accordance with law, and any other patient shall be discharged by the facility within 48 hours of the court's verbal order or by the end of the next working day, whichever is longer, with a discharge plan prepared pursuant to section 18 of P.L.1987, c.116 (C.30:4-27.18).

c. (1) The court may discharge the patient subject to conditions, if the court finds that the person does not need involuntary or continued involuntary commitment and the court finds:

(a) that the patient's history indicates a high risk of rehospitalization because of the patient's failure to comply with discharge plans; or

(b) that there is substantial likelihood that by reason of mental illness the patient will be dangerous to himself, others or property if the patient does not receive other appropriate and available services that render involuntary commitment unnecessary.

(2) Conditions imposed pursuant to this section shall include those recommended by the facility and mental health agency staff and developed with the participation of the patient. Conditions imposed on the patient shall be specific and their duration shall not exceed 90 days unless the court determines, in a case in which the Attorney General or a county prosecutor participated, that the conditions should be imposed for a longer period. If the court imposes conditions for a period exceeding six months, the court shall provide for a review hearing on a date the court deems appropriate but in no event later than six months from the date of the order. The review hearing shall be conducted in the manner provided in this section, and the court may impose any order authorized pursuant to this section.

(3) The designated mental health agency staff person shall notify the court if the patient fails to meet the conditions of the discharge plan, and the court shall issue an order directing that the person be taken to a screening service for an assessment. The court shall determine, in conjunction with the findings of a screening service, if the patient needs to be rehospitalized and, if so, the patient shall be returned to the facility. The court shall hold a hearing within 20 days of the day the patient was returned to the facility to determine if the order of conditional discharge should be vacated.

d. Notwithstanding subsection a. of this section, or any provision of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through 30:4-27.18), no person committed while serving a term of incarceration shall be discharged by the court or administratively discharged prior to the date on which the person's maximum term would have expired had he not been committed. If the person is no longer in need of involuntary commitment, the person shall be

returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and the person shall be given day for day credit for all time during which the person was committed.

10. Section 17 of P.L.1987, c.116 (C.30:4-27.17) is amended to read as follows:

**C.30:4-27.17 Discharge determination.**

17. a. The treatment team at a short-term care or psychiatric facility or special psychiatric hospital shall, subject to the limitations set forth in subsection b. of this section, administratively discharge a patient from involuntary commitment status if the treatment team determines that the patient no longer needs involuntary commitment. If a discharge plan has not been developed pursuant to section 18 of this act, it shall be developed forthwith.

b. If the patient is confined pursuant to an order entered under section 15 of P.L.1987, c.116 (C.30:4-27.15) in a case in which the Attorney General or a county prosecutor participated, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the person or persons who presented the case for involuntary commitment. If, within five days of receipt of such notice, a person who presented the case for commitment files a request for a hearing on the issue of continuing need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L. 1987, c.116 (C.30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L.1987, c.116 (C.30:4-27.15).

11. Section 28 of P.L.1966, c.282 (C.45:14B-28) is amended to read as follows:

**C.45:14B-28 Confidential relations and communications.**

28. The confidential relations and communications between and among a licensed practicing psychologist and individuals, couples, families or groups in the course of the practice of psychology are placed on the same basis as those provided between attorney and client, and nothing in this act shall be construed to require any such privileged communications to be disclosed by any such person.

There is no privilege under this section for any communication:  
(a) upon an issue of the client's condition in an action to commit the

client or otherwise place the client under the control of another or others because of alleged mental incompetence, or in an action in which the client seeks to establish his competence or in an action to recover damages on account of conduct of the client which constitutes a crime; or (b) upon an issue as to the validity of a document as a will of the client; or (c) upon an issue between parties claiming by testate or intestate succession from a deceased client.

12. This act shall take effect immediately.

Approved October 31, 1994.

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## CHAPTER 135

AN ACT concerning notification procedures for certain offenders and supplementing Title 30 of the Revised Statutes.

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

**C.30:4-123.53a** Definitions; notice of release of certain offenders; procedures.

1. a. As used in this act:

“Prosecutor” means the county prosecutor of the county in which the defendant was convicted unless the matter was prosecuted by the Attorney General, in which case “prosecutor” means the Attorney General.

“Office of Victim Witness Advocacy” means the Office of Victim Witness Advocacy of the county in which the defendant was convicted.

b. Notwithstanding any other provision of law to the contrary, the Department of Corrections shall provide written notice to the prosecutor of the anticipated release from incarceration in a county or State penal institution or the Adult Diagnostic and Treatment Center of a person convicted of murder; manslaughter; aggravated sexual assault; sexual assault; aggravated assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S.2C:24-4; luring or

enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); any other offense involving serious bodily injury or an attempt to commit any of the aforementioned offenses.

c. Notwithstanding any other provision of law to the contrary, the Department of Human Services shall provide written notice to the prosecutor of the anticipated release from incarceration of a juvenile adjudicated delinquent on the basis of an offense which, if committed by an adult, would constitute murder; manslaughter; aggravated sexual assault; sexual assault; aggravated assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); any other offense involving serious bodily injury or an attempt to commit any of the aforementioned offenses.

d. If available, the notice shall be provided to the prosecutor 90 days before the inmate's anticipated release; provided however, the notice shall be provided at least 30 days before release. The notice shall include the person's name, identifying factors, offense history, and anticipated future residence. The prosecutor shall notify the Office of Victim and Witness Advocacy and that office shall use any reasonable means available to them to notify the victim of the anticipated release unless the victim has requested not to be notified.

e. Upon receipt of notice, the prosecutor shall provide notice to the law enforcement agency responsible for the municipality where the inmate will reside, the municipality in which any victim resides, and such other State and local law enforcement agencies as appropriate for public safety.

**C.30:4-123.53b Immunity.**

2. Notwithstanding any other provision of law to the contrary, any person who provides or fails to provide information relevant to the procedures set forth in section 1 of P.L.1994, c.135 (C.30:4-123.53a) shall not be liable in any civil or criminal action. Nothing herein shall be deemed to grant any such immunity to any person by his willful or wanton act of commission or omission.

3. This act shall take effect immediately.

Approved October 31, 1994.

## CHAPTER 136

AN ACT concerning DNA testing of certain offenders and supplementing Title 53 of the New Jersey Statutes.

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

**C.53:1-20.17 Short title.**

1. This act shall be known and may be cited as the "DNA Database and Databank Act of 1994."

**C.53:1-20.18 Findings; declarations.**

2. The Legislature finds and declares that DNA databanks are an important tool in criminal investigations and in deterring and detecting recidivist acts. Several states have enacted laws requiring persons convicted of certain crimes, especially serious sexual offenses, to provide genetic samples for DNA profiling. Moreover, it is the policy of this State to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of individuals who are the subjects of criminal investigations. It is therefore in the best interest of the State of New Jersey to establish a DNA database and a DNA databank containing blood samples submitted by certain serious sexual offenders.

**C.53:1-20.19 Definitions.**

3. As used in this act:

"CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic laboratories.

"DNA" means deoxyribonucleic acid.

"DNA record" means DNA identification information stored in the State DNA database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results.

"DNA sample" means a blood sample provided by any person convicted of any offense enumerated in section 4 of this act or submitted to the division for analysis pursuant to a criminal investigation.

"Division" means the Division of State Police in the Department of Law and Public Safety.

"FBI" means the Federal Bureau of Investigation.

“State DNA database” means the DNA identification record system to be administered by the division which provides DNA records to the FBI for storage and maintenance in CODIS.

“State DNA databank” means the repository of DNA samples collected under the provisions of this act.

**C.53:1-20.20 DNA samples required; conditions.**

4. On or after January 1, 1995 every person convicted of aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact and criminal sexual contact under N.J.S.2C:14-3 or any attempt to commit any of these crimes and who is sentenced to a term of imprisonment shall have a blood sample drawn for purposes of DNA testing upon commencement of the period of confinement. In addition, every person convicted on or after January 1, 1995 of these offenses, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence imposed. A person who has been convicted and incarcerated as a result of a conviction of one or more of these offenses prior to January 1, 1995 shall have a DNA sample drawn before parole or release from incarceration.

**C.53:1-20.21 Purposes of DNA samples.**

5. Tests shall be performed on each blood sample submitted pursuant to section 4 of this act in order to analyze and type the genetic markers contained in or derived from the DNA. Except insofar as the use of the results of these tests for such purposes would jeopardize or result in the loss of federal funding, the results of these tests shall be used for the following purposes:

- a. For law enforcement identification purposes;
- b. For development of a population database;
- c. To support identification research and protocol development of forensic DNA analysis methods;
- d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes;
- e. For research, administrative and quality control purposes;
- f. For judicial proceedings, by order of the court, if otherwise admissible pursuant to applicable statutes or rules;
- g. For criminal defense purposes, on behalf of a defendant, who shall have access to relevant samples and analyses performed in connection with the case in which the defendant is charged; and
- h. For such other purposes as may be required under federal law as a condition for obtaining federal funding.

The DNA record of identification characteristics resulting from the DNA testing conducted pursuant to this section shall be stored and maintained in the State DNA database and forwarded to the FBI for inclusion in CODIS. The DNA sample itself will be stored and maintained in the State DNA databank.

**C.53:1-20.22 Drawing of DNA samples; conditions.**

6. Each DNA sample required to be drawn pursuant section 4 of this act from persons who are incarcerated shall be drawn at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be drawn at a prison or jail unit to be specified by the sentencing court. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist or other health care worker with phlebotomy training shall draw any DNA sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing of any DNA sample. No sample shall be drawn if the division has previously received an adequate blood sample from the convicted person.

**C.53:1-20.23 Rules; procedures.**

7. The division shall adopt rules governing the procedures to be used in the submission, identification, analysis and storage of DNA samples and typing results of DNA samples submitted under this act. The DNA sample shall be securely stored in the State databank. The typing results shall be securely stored in the State database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the State database. The DNA identification system established pursuant to this act shall be compatible with that utilized by the FBI.

**C.53:1-20.24 Use of State database.**

8. a. It shall be the duty of the division to store, analyze, classify and file in the State database and with the FBI for inclusion in CODIS the DNA record of identification characteristic profiles of DNA samples submitted pursuant to section 4 of this act and to make such information available from the State database as provided in this section. The division may contract out DNA typing analysis to a qualified DNA laboratory that meets established guidelines. The results of the DNA profile of individuals in the

State database shall be made available to local, State or federal law enforcement agencies, and approved crime laboratories which serve these agencies, upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order issued by a judge of the Superior Court directing the division to release these results to appropriate parties not listed above. The division shall maintain a file of such court orders.

b. The division shall adopt rules governing the methods of obtaining information from the State database and CODIS and procedures for verification of the identity and authority of the requester.

c. The division shall create a separate population database comprised of records obtained pursuant to this act after all personal identification is removed. Nothing shall prohibit the division from sharing or disseminating population databases with other law enforcement agencies, and crime laboratories that serve these agencies, upon written or electronic request and in furtherance of an official investigation of a criminal offense, or other third parties deemed necessary to assist with statistical analysis of the population databases. The population database may be made available to and searched by other agencies participating in the CODIS system.

**C.53:1-20.25 Expungement of records from State records; conditions.**

9. a. Any person whose DNA record or profile has been included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that the conviction that resulted in the inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application for expungement shall be served on the prosecutor for the county which the conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon that conviction.

b. Upon receipt of an order of expungement and unless otherwise provided, the division shall purge the DNA record and all other identifiable information from the State database and the DNA sample stored in the State databank covered by the order. If the entry in the database reflects more than one conviction, that



entry shall not be expunged unless and until the person has obtained an order of expungement for each conviction on the grounds contained in subsection a. of this section. If one of the bases for inclusion in the DNA database was other than conviction, that entry shall not be subject to expungement.

**C.53:1-20.26 Wrongful disclosure of information.**

10. Any person who by virtue of employment, or official position, has possession of, or access to, individually identifiable DNA information contained in the State DNA database or databank and who purposely discloses it in any manner to any person or agency not entitled to receive it is guilty of a disorderly person's offense.

**C.53:1-20.27 Confidentiality.**

11. All DNA profiles and samples submitted to the division pursuant to this act shall be treated as confidential except as provided in section 8 of this act.

**C.53:1-20.28 Funding of act in first year.**

12. The Attorney General shall use 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, as may be available and appropriate for the costs of implementing P.L.1994, c.136 (C.53:1-20.17 et seq.) during the first year following enactment.

13. This act shall take effect immediately.

Approved October 31, 1994.

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CHAPTER 137

AN ACT concerning domestic violence, amending and supplementing chapter 25 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:25-26.1 Notification of victim of release of defendant.**

1. Notwithstanding any other provision of law to the contrary, whenever a defendant charged with a crime or an offense involving domestic violence is released from custody the prosecuting agency shall notify the victim.

2. Section 13 of P.L.1991, c. 261 (C.2C:25-29) is amended to read as follows:

**C.2C:25-29 Hearing procedure; relief.**

13. a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of this act in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

- (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and visitation the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

An order issued under this act shall only restrain or provide damages payable from a person against whom a complaint has been filed under this act and only after a finding or an admission is made that an act of domestic violence was committed by that person. The issue of whether or not a violation of this act occurred, including an act of contempt under this act, shall not be subject to mediation or negotiation in any form. In addition, where a temporary or final order has been issued pursuant to this act, no party shall be ordered to participate in mediation on the issue of custody or visitation.

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. At the hearing the judge of the Family Part of

the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

(1) An order restraining the defendant from subjecting the victim to domestic violence, as defined in this act.

(2) An order granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the victim to remain in the residence, the court may order the defendant to pay the victim's rent at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the victim and the victim requires alternative housing.

(3) An order providing for visitation. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of visitation. Visitation arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for visitation may include a designation of a place of visitation away from the plaintiff, the participation of a third party, or supervised visitation.

(a) The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with visitation rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a visitation order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious.

(b) The court shall consider suspension of the visitation order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the visitation order has threatened the safety and well-being of the child.

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Violent Crimes Compensation Board for any and all compensation paid by the Violent Crimes Compensation Board directly to or on behalf of the victim, and may require that the defendant reimburse any parties that may have compensated the victim, as the court may determine.

Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

(5) An order requiring the defendant to receive professional domestic violence counseling from either a private source or a source appointed by the court and, in that event, at the court's discretion requiring the defendant to provide the court at specified intervals with documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling.

(6) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim and requiring the defendant to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members.

(7) An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action.

(9) An order granting either party temporary possession of specified personal property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

(10) An order awarding emergency monetary relief, including emergency support for minor children, to the victim and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law.

(11) An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent.

(12) An order requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued. This order shall be restricted in duration.

(13) An order which permits the victim and the defendant to occupy the same premises but limits the defendant's use of that premises, but only if it is documented by the judge granting the order that:

(a) The plaintiff specifically and voluntarily requests such an order; and

(b) The judge determines that the request is made voluntarily and with the plaintiff's knowledge that the order may not provide the same protection as an order excluding the defendant from the premises and with the plaintiff's knowledge that the order may be difficult to enforce; and

(c) Any conditions placed upon the defendant in connection with the continued access to the premises and any penalties for noncompliance with those conditions shall be explicitly set out in the order and shall be in addition to any other remedies for non-compliance available to the victim.

(14) An order granting any other appropriate relief for the plaintiff and dependent children, provided that the plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order.

(15) An order that requires that the defendant report to the intake unit of the Family Part of the Chancery Division of the Superior Court for monitoring of any other provision of the order.

(16) An order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

(17) An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the com-

plainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to, behavior prohibited under the provisions of P.L.1992, c.209 (C.2C:12-10).

(18) An order requiring the defendant to undergo a psychiatric evaluation.

c. Notice of orders issued pursuant to this section shall be sent by the clerk of the Family Part of the Chancery Division of the Superior Court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

d. Upon good cause shown, any final order may be dissolved or modified upon application to the Family Part of the Chancery Division of the Superior Court, but only if the judge who dissolves or modifies the order is the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based.

3. This act shall take effect immediately.

Approved October 31, 1994.

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#### CHAPTER 138

AN ACT preventing consumer fraud in the preparation, distribution and sale of food as kosher and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

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

**C.56:8-61 Short title.**

1. This act shall be known and may be cited as the "Kosher Food Consumer Protection Act."

**C.56:8-62 Definitions.**

2. As used in this act:

"Dealer" means any establishment that advertises, represents or holds itself out as selling, preparing or maintaining food as kosher. This shall include, but not be limited to, manufacturers, slaughterhouses, wholesalers, stores, restaurants, hotels, catering facilities, butcher shops, summer camps, bakeries, delicatessens,

supermarkets, grocery stores, nursing homes, freezer dealers and food plan companies. These establishments may also sell, prepare or maintain food not represented as kosher.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or the director's designee.

"Food" means a food, food product, food ingredient, dietary supplement or beverage.

**C.56:8-63 Posting of kosher information.**

3. a. Any dealer who prepares, distributes, sells or exposes for sale any food represented to be kosher or kosher for Passover, shall disclose the basis upon which that representation is made by posting the information required by the director, pursuant to regulations adopted pursuant to the authority provided in section 4 of P.L.1960, c.39 (C.56:8-4), on a sign of a type and size specified by the director in a conspicuous place upon the premises at which the food is sold or exposed for sale as required by the director.

b. It shall be an unlawful practice for any person to violate the requirements of subsection a. of this section.

**C.56:8-64 Unlawful practice not committed; proof required.**

4. Any person subject to the requirements of section 3 of this act shall not be deemed to have committed an unlawful practice if it can be shown by a preponderance of the evidence that the person relied in good faith upon the representations of a slaughterhouse, manufacturer, processor, packer or distributor of any food represented to be kosher or kosher for Passover.

**C.56:8-65 Presumptive evidence of intent to sell.**

5. Possession by a dealer of any food not in conformance with its disclosure is presumptive evidence that the person is in possession of that food with the intent to sell.

**C.56:8-66 Compliance with requirements.**

6. Any dealer who prepares, distributes, sells or exposes for sale any food represented to be kosher or kosher for Passover shall comply with all requirements of the director, including, but not limited to, recordkeeping, labeling and filing, pursuant to regulations adopted pursuant to the authority provided in section 4 of P.L.1960, c.39 (C.56:8-4).

7. This act shall take effect immediately.

Approved November 1, 1994.

## CHAPTER 139

AN ACT concerning voluntary contributions through gross income tax returns for the Vietnam Veterans' Memorial Fund, supplementing Title 54A of the New Jersey Statutes.

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

**C.54A:9-25.6 Contribution to Vietnam Veterans' Memorial Fund; indication on income tax return.**

1. Each taxpayer shall have the opportunity to indicate on the taxpayer's New Jersey gross income tax return for any taxable year beginning on or after January 1, 1994 and before December 31, 1998 that a portion of the taxpayer's tax refund or an enclosed contribution shall be deposited in the Vietnam Veterans' Memorial Fund established pursuant to section 4 of P.L.1985, c.494 (C.52:18A-208). The Director of the Division of Taxation in the Department of the Treasury shall provide each taxpayer with the opportunity to indicate the taxpayer's preference on the tax return to contribute to the fund in substantially the following way: "Vietnam Veterans' Memorial Fund: I wish to contribute \$5 ☐, \$10 ☐, other amount \$ ☐ to this fund."

Any costs incurred by the Division of Taxation for collection or administration attributable to this act may be deducted from receipts collected pursuant to this act, as determined by the Director of the Division of Budget and Accounting.

The State Treasurer shall deposit net contributions collected pursuant to this act into the Vietnam Veterans' Memorial Fund.

2. This act shall take effect immediately.

Approved November 1, 1994.

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CHAPTER 140

AN ACT concerning public records, amending R.S.46:19-1, R.S.47:1-5 and P.L.1953, c.410 and supplementing chapter 3 of Title 47 of the Revised Statutes.

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



1. R.S.46:19-1 is amended to read as follows:

**Recording officer's books, methods.**

46:19-1. The county recording officer of each of the several counties of this State shall record, when delivered to him for that purpose, and duly acknowledged or proved or certified, when acknowledgment, proof or certification is required, in large, well-bound books of good paper or by some other method as authorized pursuant to R.S.47:1-5. If a method authorized pursuant to R.S.47:1-5 is used, then a copy of the record shall also be kept on microfilm as prescribed in R.S.47:1-5. If well-bound books are to be provided for that purpose, they shall be carefully preserved, and shall be called by and backed with the different names and intended to contain the different types of conveyances and instruments authorized by this Title or any other law to be recorded, which books shall include, among others, the following:

a. "Deeds" --for the various instruments set forth in section 46:16-1 of this Title, and therein described as conveyances, releases, declarations of trust; letters of attorney for sales, conveyances, assurances, acquittances or releases; leases for life or any term not less than two years, or assignments thereof absolute, agreements for sales; consents to the execution of powers to sell, convey, acquit or release; writings to declare or direct uses or trusts, and also all other instruments heretofore or hereafter directed by law to be acknowledged or proved and recorded, and not by such law expressly directed to be recorded in some other class of books;

b. "Ancient deeds" --for all ancient deeds of the description set forth in section 46:16-7 of this Title;

c. "Releases" --for all releases or deeds in which the intention to operate as releases from the lien and effect of any mortgage or judgment is plainly manifested, and all deeds, releases or postponements in which the intention to operate as a postponement or waiver of priority of the lien of a judgment or judgments, mechanic's lien or liens or recorded mortgage or mortgages to the lien and operation of a mortgage or mortgages, recorded, or to be recorded, subsequent thereto, is plainly manifested;

d. "Mortgages" --for all mortgages, defeasible deeds or other conveyances in the nature of a mortgage and assignments of such leases by way of mortgage or security;

e. "Assignment of mortgages" --for all assignments of mortgages, whether absolute or by way of mortgage or security;

f. "Discharge of mortgages" --for all discharges or satisfaction pieces of mortgages;

g. Such other books, not herein enumerated, but which may be required by the provisions of this Title or by some other law for the recording of such deeds or other instruments as are not expressly directed by law to be recorded in some specifically named book.

In like books the county recording officer shall record such deeds or other instruments of or affecting goods and chattels and personal property, to be called and backed as follows:

a. "Chattel mortgages" --for all chattel mortgages, and assignments, releases and discharges thereof;

b. "Conditional sales contracts" --for the entries required by section 46:32-15 of this Title;

c. "Conditional sales contracts affecting goods attached to realty" --for the entries required by section 46:32-14 of this Title;

d. "Deeds of trust of personalty" --for all deeds of personal property to literary, benevolent, religious and charitable institutions;

e. "Letters or powers of attorney--conditional sale contracts" - --for all letters or powers of attorney authorizing the execution and delivery of statements of satisfaction of conditional sale contracts and all revocations of such letters or powers of attorney;

f. "Aircraft liens" --for the entries required by N.J.S. 2A:44-2.

To the various books herein enumerated every person shall have access, at proper seasons, and be entitled to transcripts therefrom on paying the fees allowed by law.

2. R.S.47:1-5 is amended to read as follows:

**Photographic, data records in certain offices; effect as evidence.**

47:1-5. All papers, documents and instruments in writing authorized or required by law to be recorded, filed, registered, or indexed in the office of the Secretary of State, clerk, register of deeds and mortgages and surrogate of any county of this State, as well as the record and index of any such papers, documents or instruments in writing, which may be recopied, rerecorded or transcribed pursuant to any law of this State, may be recopied, rerecorded, reindexed or transcribed in such offices by means of photography, data processing or image processing, and such rerecord or transcribing, made by means of photography, data processing or image processing, shall have the same legal force, meaning and effect as if made in handwriting or in typewriting.

The Secretary of State, clerk, register of deeds and mortgages and surrogate of any county of this State may make a copy by means of photography, data processing or image processing of any document or instrument and such photographic, data processed or image processed copy, if made, shall have the same legal force, meaning and effect as if made in handwriting or in typewriting.

3. Section 2 of P.L.1953, c.410 (C.47:3-16) is amended to read as follows:

**C.47:3-16 Terms defined.**

2. As used in this act, except where the context indicates otherwise, the words "public records" mean any paper, written or printed book, document or drawing, map or plan, photograph, microfilm, data processed or image processed document, sound-recording or similar device, or any copy thereof which has been made or is required by law to be received for filing, indexing, or reproducing by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received by any such officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, in connection with the transaction of public business and has been retained by such recipient or its successor as evidence of its activities or because of the information contained therein.

As used in this act the word "bureau" means the Bureau of Archives and History in the Department of Education.

4. Section 12 of P.L.1953, c.410 (C.47:3-26) is amended to read as follows:

**C.47:3-26 Standards, procedures and rules.**

12. The Bureau of Archives and History in the Department of Education, with the approval of the State Records Committee established by section six hereof, shall formulate standards, procedures and rules for the photographing, microphotographing, microfilming, data processing and image processing of public records and for the preservation, examination and use of such records, including the indexing and arrangement thereof, for convenient reference purposes.

Whenever any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, shall have photographed, microphotographed,

microfilmed, data processed or image processed all or any part of the public records, kept or required by law to be received and indexed in such manner as to conform with the standards, procedures and rules, and such photographs, microphotographs, microfilms, or data processed or image processed documents have been placed in conveniently accessible files and provision shall have been made for the preservation, examination and use of the same in conformity with the said standards and procedures, the original records from which the photographs, microphotographs, microfilms, or data processed or image processed documents have been made, or any part thereof, may be destroyed or the records therein otherwise effectively obliterated; provided, the said bureau shall first have given its written consent to such destruction or other disposition.

In the event of any such destruction or other disposition of any public records under the provisions of this section, the photograph, microphotograph, microfilm, or data processed or image processed document or a certified copy of said photograph, microphotograph, microfilm, or data processed or image processed document shall be receivable in evidence in any court or proceeding and shall have the same force and effect as though the original public record had been there produced and proved.

**C.47:1-11 Reproduction of public records, use as originals.**

5. Any public agency, the Secretary of State or the County Clerk, Register, or Surrogate of a county may copy, record, index or transcribe public records by means of photography, data processing, image processing, or other approved means, subject to compliance with the rules and regulations promulgated therefor by the Division of Archives and Records Management in the Department of State. Any document which is a data processed or image processed copy produced and stored in accordance with the rules and regulations promulgated therefor by the division shall be considered a legal substitute for an original document.

**C.47:1-12 Rules, regulations; systems of recording.**

6. a. The Division of Archives and Records Management in the Department of State, with the approval of the State Records Committee established pursuant to section 6 of P.L.1953, c.410 (C.47:3-20), shall promulgate such rules and regulations as may be necessary to effectuate the purposes of this act and to safeguard the State's documentary heritage.

b. No public agency, County Clerk or Register shall adopt, use or employ any system for recording, filing, registration or indexing as

authorized by R.S.47:1-5, as amended by this act, unless the same shall conform to the rules and regulations to be promulgated by the Division of Archives and Records Management in the Department of State pursuant to subsection a. of this section, and shall first be approved by the Division of Archives and Records Management. No such system shall be approved until the Division of Archives and Records Management shall have fully promulgated those rules and regulations.

c. Any system for recording, filing, registration or indexing as authorized by R.S. 47:1-5, as amended by this act, which employs data processing or image processing, and which was adopted, used or employed prior to the effective date of this act, shall nevertheless be subject to the rules and regulations to be promulgated by the Division of Archives and Records Management pursuant to subsection a. of this section. The approval of the Division of Archives and Records Management shall be necessary to bring about the compliance of such systems, in a prompt and orderly fashion, with the standards set forth in the rules and regulations.

**C.47:1-13 Alteration, correction, revision of records; notation.**

7. Whenever it shall be necessary to alter, correct or revise the record pertaining to any paper, document or instrument, or the index pertaining to the same, which shall previously have been recorded, filed, registered, or indexed, the officer responsible for maintaining such records or custodian thereof shall cause a notation to be made of the date and nature of the alteration, correction or revision, which notation shall become part of the record. The officer or custodian shall also preserve the record in its original form prior to alteration, correction or revision, and the same shall be available to any citizen of this State, pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.).

**C.47:1A-2.1 Right to receive printed copies of data, image processed records.**

8. The right of the citizens of this State to inspect and copy public records pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) shall, with respect to the copying of records maintained by a system of data processing or image processing, be deemed to refer to the right to receive printed copies of such records.

**C.47:1-14 Destruction of public records under law.**

9. No official responsible for maintaining public records or the custodian thereof shall destroy, obliterate or dispose of any paper, document, instrument, or index which shall have been recorded, filed, registered or indexed except as specifically permitted by law. No law, statute or regulation shall be construed to permit the destruction, obliteration or disposal of any such records by implication.

**C.47:1-15 References to Bureau of Archives and History.**

10. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Bureau of Archives and History in the Department of Education or the administrator thereof, the same shall be considered to mean and refer to the Division of Archives and Records Management in the Department of State, established pursuant to the Governor's Reorganization Plan, filed April 25, 1983.

11. This act shall take effect July 1, 1995 and applies to papers, documents or instruments heretofore or hereafter recorded or indexed.

Approved November 7, 1994.

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**CHAPTER 141**

**AN ACT concerning the Pinelands Development Credit Bank, and amending P.L.1985, c.310.**

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

1. Section 19 of P.L.1985, c.310 (C.13:18A-48) is amended to read as follows:

**C.13:18A-48 Extension of pinelands development credit guarantee.**

19. Notwithstanding any other provisions of this act to the contrary:

- a. No pinelands development credit guarantee shall be extended for a period of time in excess of five years;
- b. No pinelands development credit guarantee shall be extended after December 31, 1997;
- c. No pinelands development credit shall be purchased by the bank after December 31, 1997.

2. This act shall take effect immediately.

Approved November 14, 1994.

## CHAPTER 142

AN ACT concerning the use and acceptance by banking institutions of certain forms of power of attorney and amending P.L.1991, c.95.

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

1. Section 1 of P.L.1991, c.95 (C.46:2B-10) is amended to read as follows:

**C.46:2B-10 Definitions.**

1. As used in this act:

“Account” means an agreement between a banking institution and its customer pursuant to which the banking institution accepts funds or property of the customer and agrees to repay or return the funds or property upon the terms and conditions specified in the agreement. The term “account” includes, but is not limited to, checking accounts, savings accounts, certificates of deposit and other types of time and demand accounts as banking institutions are authorized to enter into pursuant to applicable federal or State law. The term “account” does not include an agreement pursuant to which a banking institution agrees to act as a fiduciary within the meaning of the “Uniform Fiduciaries Law,” N.J.S.3B:14-52 et seq.

“Agent” means the person authorized to act for another person pursuant to a power of attorney. An agent may be referred to as an “attorney,” “attorney-in-fact” or “deputy” in the power of attorney.

“Banking institution” includes banks, savings banks, savings and loan associations and credit unions, whether chartered by the United States, this State or any other state or territory of the United States or a foreign country.

A thing is done “in good faith” when it is in fact done honestly, regardless of whether it is done negligently.

“Power of attorney” means a duly signed and acknowledged written document in which a principal authorizes an agent to act on his behalf.

“Principal” means a person executing a power of attorney.

“Safe deposit company” means a company operating pursuant to P.L.1983, c.566 (C.17:14A-1 et seq.).

2. Section 4 of P.L.1991, c.95 (C.46:2B-13) is amended to read as follows:

**C.46-2B-13 Banking institutions to accept power of attorney.**

4. With respect to banking transactions, banking institutions shall accept and rely on a power of attorney which conforms to this act and shall permit the agent to act and exercise the authority set forth in this act, provided that:

a. The banking institution shall refuse to rely on or act pursuant to a power of attorney if (1) the signature of the principal is not genuine, or (2) the employee of the banking institution who receives, or is required to act on, the power of attorney has received actual notice of the death of the principal, of the revocation of the power of attorney or of the disability of the principal at the time of the execution of the power of attorney;

b. The banking institution is not obligated to rely on or act pursuant to the power of attorney if it believes in good faith that the power of attorney does not appear to be genuine, that the principal is dead, that the power of attorney has been revoked or that the principal was under a disability at the time of the execution of the power of attorney. The banking institution shall have a reasonable time under the circumstances within which to decide whether it will rely on or act pursuant to a power of attorney presented to it, but it may refuse to act or rely upon a power of attorney first presented to it more than 10 years after its date or on which it has not acted for a 10-year period unless the agent is either the spouse, parent or a descendant of a parent of the principal;

c. If the power of attorney provides that it "shall become effective upon the disability of the principal" or similar words, the banking institution is not obligated to rely on or act pursuant to the power of attorney unless the banking institution is provided by the agent with proof to its satisfaction that the principal is then under a disability as provided in the power of attorney;

d. If the agent seeks to withdraw or pay funds from an account of the principal, the agent shall provide evidence satisfactory to the banking institution of his identity and shall execute a signature card in a form as required by the banking institution;

e. If the banking institution refuses to rely on or act pursuant to a power of attorney and the agent or principal has, in writing, provided the banking institution with an address of the agent, the institution shall notify the agent by a writing addressed to the address provided to it that the power of attorney has been rejected and the reason for the rejection;

f. The banking institution has viewed a form of power of attorney which contains an actual original signature of the principal. Alternatively, if the banking institution receives an affidavit



of the agent that such an original is not available to be presented, the banking institution may accept a photocopy of the power of attorney certified to be a true copy of the original by either (1) another banking institution or (2) the county recording office of the county in which the original was recorded.

3. This act shall take effect immediately.

Approved November 14, 1994.

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#### CHAPTER 143

AN ACT authorizing the issuance of mine subsidence insurance by the New Jersey Insurance Underwriting Association and amending P.L.1968, c.129.

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

1. Section 1 of P.L.1968, c.129 (C.17:37A-1) is amended to read as follows:

**C.17:37A-1 Policy declaration for mandatory program of essential insurance.**

1. It is hereby declared that an adequate market for fire and extended coverage insurance, including mine subsidence insurance, is necessary to attract and retain private capital in central city areas, and various other areas of the State; that without such insurance it is impossible to supply needed goods and services, and expand job opportunities; that orderly community development depends upon an adequate supply of such insurance to enable homeowners to obtain financing for the purchase and improvement of their property; that while the need for such insurance is growing there is reason to believe that the market for same is constricting, and likely to become more constricted in the future; that voluntary efforts to provide fire and extended coverage insurance, including mine subsidence insurance, in areas likely to be unprofitable deserve praise, but are insufficient to meet the needs of these areas; that the State has an obligation to require every insurance company writing fire and extended coverage insurance in New Jersey to meet its public responsibilities, instead of shifting the entire burden to a few public spirited companies; that it is the purpose of this act to accept this

obligation; and that any mandatory program to provide fire and extended coverage insurance, including mine subsidence insurance, for all citizens of New Jersey should be supervised by the Commissioner of Insurance and periodically reviewed in the light of experience and intervening events by the Legislature.

2. Section 2 of P.L.1968, c.129 (C.17:37A-2) is amended to read as follows:

**C.17:37A-2 Definitions.**

2. As used in this act, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) "Essential property insurance" means insurance against direct loss to property as defined and limited in the standard fire policy and extended coverage endorsement thereon, as approved by the commissioner, and insurance for such types, classes, and locations of property against the perils of vandalism, malicious mischief, burglary, or theft, or mine subsidence, or such other classes of insurance as the commissioner may designate in order to comply with federal legislation and obtain federal reinsurance;

(b) "Basic property insurance" means insurance against loss to property as defined and limited in: the standard fire policy and extended coverage endorsement thereon, the allied line policy or endorsement, the homeowners' multiple peril policy, the commercial multiple peril policy, the burglary or theft coverage policy, the mine subsidence policy and other like policies;

(c) "Association" means the New Jersey Insurance Underwriting Association established pursuant to the provisions of this act;

(d) "Plan of operation" means the plan of operation of the association approved or promulgated by the commissioner pursuant to the provisions of this act;

(e) "Insurable property" means real property at fixed locations in urban areas in this State, or the tangible personal property located thereon, but shall not include insurance on automobile and farm risks, with an insurable value not in excess of the limits provided in the plan of operation of the association and in no event more than \$1,500,000.00, which property is determined by the association, after inspection and pursuant to the criteria specified in the plan of operation to be in an insurable condition; provided, however, that neighborhood, area, location, environmental hazards beyond the

control of the applicant or ownership of the property shall not be considered in determining insurable condition;

(f) "Commissioner" means the Commissioner of Insurance of New Jersey;

(g) "Net direct premiums" means gross direct premiums (excluding reinsurance assumed and ceded) written on property in this State for fire and extended coverage insurance, including the fire and extended coverage components of homeowners and commercial multiple peril package policies, as computed by the commissioner, less return premiums upon canceled contracts, dividends paid or credited to policyholders or the unused or unabsorbed portions of premium deposits;

(h) "Urban area" means any municipality or other political subdivision (1) which the Secretary of the United States Department of Housing and Urban Development has approved as eligible for an urban renewal project after a local public agency has been formed in that community to avail itself of a United States Housing and Urban Renewal Program or (2) designated by the association with the approval of the commissioner or (3) which the commissioner may designate;

(i) "Mine subsidence" means lateral or vertical ground movement resulting from the collapse of man-made underground mines, including, but not limited to, coal mines, clay mines, limestone mines, slate mines, iron ore mines, and other metal or ore mines, which directly damages structures. "Mine subsidence" does not include lateral or vertical ground movement caused by earthquake, landslide, volcanic eruption, soil conditions, soil erosion, soil freezing and thawing, improperly compacted soil, construction defects, roots of trees and shrubs or collapse of storm and sewer drains and rapid transit tunnels;

(j) "Mine subsidence insurance" means insurance against loss to an insured structure caused by mine subsidence;

(k) "Structure" means, for purposes of subsections (i) and (j) of this section, any dwelling, building or fixture permanently affixed to realty located in this State including driveways, sidewalks, parking lots, basements, footings, foundations, septic systems and underground pipes directly servicing the dwelling or building. "Structure" does not include land, trees, plants, crops or agricultural field drainage tile.

3. This act shall take effect immediately.

Approved November 14, 1994.

## CHAPTER 144

AN ACT concerning bail for persons charged with certain criminal offenses and supplementing Title 2A of the New Jersey Statutes.

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

**C.2A:162-12 Crimes with bail restrictions; posting of bail.**

1. a. As used in this section:

“Crime with bail restrictions” means a crime of the first or second degree charged under any of the following sections:

- (1) Murder .....2C:11-3.
- (2) Manslaughter .....2C:11-4.
- (3) Kidnapping .....2C:13-1.
- (4) Sexual Assault .....2C:14-2.
- (5) Robbery .....2C:15-1.
- (6) Carjacking.....P.L.1993,c.221,s.1 (C.2C:15-2).
- (7) Arson and Related Offenses .....2C:17-1.
- (8) Causing or Risking Widespread  
Injury or Damage .....2C:17-2.
- (9) Burglary .....2C:18-2.
- (10) Theft by Extortion .....2C:20-5.
- (11) Endangering the Welfare of  
Children .....2C:24-4.
- (12) Resisting Arrest; Eluding  
Officer.....2C:29-2.
- (13) Escape .....2C:29-5.
- (14) Corrupting or Influencing a  
Jury .....2C:29-8.
- (15) Possession of Weapons for  
Unlawful Purposes .....2C:39-4.
- (16) Weapons Training for Illegal  
Activities.....P.L.1983,c.229,s.1 (C.2C:39-14).

“Crime with bail restrictions” also includes any first or second degree drug-related crimes under chapter 35 of Title 2C of the New Jersey Statutes and any first or second degree racketeering crimes under chapter 41 of Title 2C of the New Jersey Statutes.

b. Subject to the provisions of subsection c. of this subsection, a person charged with a crime with bail restrictions may post the required amount of bail only in the form of:

- (1) Full cash;

(2) A surety bond executed by a corporation authorized under chapter 31 of Title 17 of the Revised Statutes; or

(3) A bail bond secured by real property situated in this State with an unencumbered equity equal to the amount of bail undertaken plus \$20,000.

c. A defendant may post bail in any combination of forms authorized in subsection b. of this section provided the court does not direct otherwise.

d. When bail is posted in the form of a bail bond secured by real property, the owner of the real property, whether the person is admitted to bail or a surety, shall also file an affidavit containing:

(1) A legal description of the real property;

(2) A description of each encumbrance on the real property;

(3) The market value of the unencumbered equity owned by the affiant as determined in a full appraisal conducted by an appraiser licensed by the State of New Jersey; and

(4) A statement that the affiant is the sole owner of the unencumbered equity.

e. Nothing herein is intended to preclude a court from releasing a person on the person's own recognizance when the court determines that such person is deserving.

2. This act shall take effect 90 days after enactment.

Approved November 16, 1994.

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## CHAPTER 145

AN ACT concerning the extension of State and local permits, and amending P.L.1992, c.82.

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

1. Section 2 of P.L.1992, c.82 (C.40:55D-131) is amended to read as follows:

**C.40:55D-131 Findings, declarations.**

2. The Legislature finds and determines that:

a. There exists a state of economic emergency in the State of New Jersey, which began on January 1, 1989, and is anticipated to

extend at least through December 31, 1996, which has drastically affected various segments of the New Jersey economy, but none as severely as the State's banking, real estate and construction sectors.

b. The process of obtaining planning and zoning board of adjustment approvals for subdivisions, site plans and variances is difficult, time consuming and expensive, both for private applicants and government bodies.

c. The process of obtaining the myriad other government approvals, such as wetlands permits, sewer extension permits, on-site wastewater disposal permits, stream encroachment permits, highway access permits, and numerous waivers and variances, is also difficult and expensive; further, changes in the law can render these approvals, if expired or lapsed, impossible to renew or to re-obtain.

d. The current economic crisis has wreaked devastation on the building industry, and many landowners and developers are seeing their life's work destroyed by the lack of credit and dearth of buyers and tenants, due to uncertainty over the state of the economy and high levels of unemployment.

e. The construction industry and related trades are sustaining severe economic losses, and the lapsing of government development approvals is exacerbating those losses.

f. Due to the current inability of builders to obtain construction financing, under existing economic conditions, more and more once-approved permits are expiring or lapsing and, as these approvals lapse, lenders must re-appraise and thereafter substantially lower real estate valuations established in conjunction with approved projects, thereby requiring the reclassification of numerous loans which, in turn, affects the stability of the banking system and reduces the funds available for future lending, thus creating more severe restrictions on credit and leading to a vicious cycle of default.

g. As a result of the continued downturn of the economy, and the continued expiration of approvals which were granted by State and local governments, it is possible that thousands of government actions will be undone by the passage of time.

h. Obtaining an extension of an approval pursuant to existing statutory or regulatory provisions is both costly in terms of time and financial resources, and insufficient to cope with the extent of the present financial emergency; moreover, the costs imposed fall on the public as well as the private sector.

i. Obtaining extensions of approvals granted by State government is frequently impossible, always difficult, and always expensive and no policy reason is served by the expiration of

these permits, which were usually approved only after exhaustive review of the application.

j. It is the purpose of this act to prevent the wholesale abandonment of approvals due to the present unfavorable economic conditions, by tolling the expiration of these approvals until such time as the economy improves, thereby preventing a waste of public and private resources.

2. Section 3 of P.L.1992, c.82 (C.40:55D-132) is amended to read as follows:

**C.40:55D-132 Definitions.**

3. As used in this act:

“Approval” means any approval of a soil erosion and sediment control plan granted by a local soil conservation district under the authority conferred by R.S.4:24-22 et seq., waterfront development permit issued pursuant to R.S.12:5-1 et seq., permit issued pursuant to “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-10 et seq.), permit issued pursuant to the “Freshwater Wetlands Protection Act,” P.L.1987, c.156 (C.13:9B-1 et seq.), approval of an application for development granted by the Delaware and Raritan Canal Commission pursuant to the “Delaware and Raritan Canal State Park Law of 1974,” P.L.1974, c.118 (C.13:13A-1 et seq.), permit issued by 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.), approval of an application for development granted by the Pinelands Commission pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), permit issued pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), septic approval granted pursuant to Title 26 of the Revised Statutes, permit granted pursuant to R.S.27:7-1 et seq. or any supplement thereto, permit granted by the Department of Transportation pursuant to Title 27 of the Revised Statutes or under the general authority conferred by State law, approval granted by a sewerage authority pursuant to the “sewerage authorities law,” P.L.1946, c.138 (C.40:14A-1 et seq.), approval granted by a municipal authority pursuant to the “municipal and county utilities authorities law,” P.L.1957, c.183 (C.40:14B-1 et seq.), approval issued by a county planning board pursuant to Chapter 27 of Title 40 of the Revised Statutes, preliminary and final approval granted in connection with an application for development pursuant to the “Municipal Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), permit granted pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217

(C.52:27D-119 et seq.), permit or certification issued pursuant to the "Water Supply Management Act," P.L.1981, c.262 (C.58:1A-1 et seq.), permit granted authorizing the drilling of a well pursuant to P.L.1947, c.377 (C.58:4A-5 et seq.), certification or permit granted, or exemption from a sewerage connection ban granted, pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), certification granted pursuant to "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c.199 (C.58:11-23 et seq.), certification or approval granted pursuant to P.L.1971, c.386 (C.58:11-25.1 et al.), certification issued pursuant to the "Water Quality Planning Act," P.L.1977, c.75 (C.58:11A-1 et seq.), approval granted pursuant to the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et seq.), stream encroachment permit issued pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), any municipal or county approval or permit granted under the general authority conferred by State law, or any other government authorization of any development application or any permit related thereto whether that authorization is in the form of a permit, approval, license, certification, waiver, letter of interpretation, agreement or any other executive or administrative decision which allows a development to proceed.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure or facility, or of any grading, soil removal or relocation, excavation or landfill or any use or change in the use of any building or other structure or land or extension of the use of land.

"Economic emergency" means the period beginning January 1, 1989 and continuing through to December 31, 1996.

"Government" means any municipal, county, regional or State government, or any agency, department, commission or other instrumentality thereof.

3. Section 4 of P.L.1992, c.82 (C.40:55D-133) is amended to read as follows:

**C.40:55D-133 Extension of approval.**

4. a. For any government approval which expired or is scheduled to expire during the economic emergency, that approval is automatically extended until December 31, 1996, except as otherwise provided hereunder. Nothing in this act shall prohibit the granting of such additional extensions as are provided by law when the extensions granted by this act shall expire.



b. Nothing in this act shall be deemed to extend or purport to extend any permit issued by the government of the United States or any agency or instrumentality thereof, or to any permit by whatever authority issued of which the duration of effect or the date or terms of its expiration are specified or determined by or pursuant to law or regulation of the federal government or any of its agencies or instrumentalities.

c. Nothing in this act shall be deemed to extend any permit or approval issued pursuant to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.) if the extension would result in a violation of federal law, or any State rule or regulation requiring approval by the Secretary of the Interior pursuant to Pub.L.95-625 (16 U.S.C. § 471 (i)).

d. This act shall not affect any administrative consent order issued by the Department of Environmental Protection in effect or issued during the period of the economic emergency, nor shall it be construed to extend any approval in connection with a resource recovery facility as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).

e. In the event that any permit extended pursuant to the "Permit Extension Act," P.L.1992, c.82 (C.40:55D-130 et seq.) was based upon the connection to a sanitary sewer system, the permit's extension shall be contingent upon the availability of sufficient capacity, on the part of the treatment facility, to accommodate the development whose approval has been extended. If sufficient capacity is not available, those permit holders whose permits have been extended shall have priority with regard to the further allocation of gallonage over those permit holders who have not received approval of a hookup prior to the enactment of the "Permit Extension Act." Priority regarding the distribution of further gallonage to any permit holder who has received the extension of a permit pursuant to the "Permit Extension Act" shall be allocated in order of the granting of the original approval of the connection.

f. This act shall not extend any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) in connection with an application for development involving a residential use where, subsequent to the expiration of the permit but prior to January 1, 1992, an amendment has been adopted to the master plan and the zoning ordinance to rezone the property to industrial or commercial use when the permit was issued for residential use.

g. In the case of any approval issued under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) which is extended pursuant to P.L.1992, c.82 (C.40:55D-130 et seq.), a municipality

may disapprove such an extension of approval for the period beyond January 1, 1996, if, subsequent to January 1, 1992, but prior to July 1, 1994, an amendment has been adopted to the master plan and the zoning ordinance to change the use of the property for which the approval was issued to a use different from the use for which the approval was issued. A municipal disapproval pursuant to this subsection shall be made prior to June 30, 1995.

h. Nothing in this act shall be deemed to extend any permit issued pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.) that expires after December 31, 1994 but prior to January 1, 1997, if the permit was issued for a development located in the coastal area, as defined pursuant to section 4 of P.L.1973, c.185 (C.13:19-4), 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.

4. This act shall take effect immediately.

Approved November 30, 1994.

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#### CHAPTER 146

AN ACT establishing a Task Force on New Jersey History.

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

1. The Legislature finds and declares that an understanding and appreciation of the history of New Jersey and of the nation is fundamentally important to the welfare of the citizens of the State; that New Jersey and its people have played a crucial historic role in the founding and development of the United States of America as a nation greatly admired around the world; that there are numerous historic sites, structures, facilities, districts, museums, libraries, archives, and other historical resources, collections, exhibits, and records located in the State that are worthy of preservation and which are useful in the teaching of the history of New Jersey and the nation; that numerous scholars are engaged in research and publication on matters and issues per-

taining to New Jersey history; that numerous professional and volunteer historical organizations carry out programs on New Jersey history; and that, therefore, in order to provide for better New Jersey history education, communicate and convey a better understanding of New Jersey history to the public, and further State and local efforts to preserve New Jersey's notable historic heritage, it is necessary to assemble a group of public and private officials and experts for the purpose of evaluating the current status, condition, and potential of history education, public history programming, historic preservation efforts, and historical resources in the State, and making appropriate recommendations based upon their assessments in that regard for consideration and possible implementation by the State.

2. There is established the Task Force on New Jersey History, which shall comprise 27 voting members as follows: two members of the Senate, from different political parties, to be appointed by the President of the Senate, and two members of the General Assembly, from different political parties, to be appointed by the Speaker of the General Assembly, all of whom shall serve ex officio; the Commissioner of the Department of Environmental Protection, the Commissioner of the Department of Education, the chairman of the Commission on Higher Education, the chairman of the New Jersey Historical Commission in the Department of State, the chairman of the board of trustees of the New Jersey Historic Trust in the Department of Environmental Protection, the chairman of the Historic Sites Council in the Department of Environmental Protection, the Administrator of the Historic Preservation Office in the Department of Environmental Protection, the Director of the Division of Archives and Records Management in the Department of State, the Director of the Division of the State Museum in the Department of State, the State Librarian in the Department of Education, and the Director of the Division of Travel and Tourism in the Department of Commerce, Energy and Economic Development, or their respective designees, all of whom shall serve ex officio; and 12 private citizens, to be appointed by the Governor, with the advice and consent of the Senate.

Of the 12 private citizen members: one shall be a representative of the New Jersey Historical Society; one shall be a representative of Preservation New Jersey; one shall be a representative of the New Jersey Council for the Humanities; one shall be a representative of an historical museum or museum association; one shall be a member or representative of a county cultural and heritage commission or historic agency, or a county historical

commission; one shall be a representative of a local historical society or an association of historical societies; one shall have demonstrated knowledge, expertise, or experience in historic preservation; one shall be an historian on the faculty of a university or college located within the State; and two shall be public school history teachers.

3. a. Members of the task force may be removed for cause by the appropriate appointing authority.

b. Vacancies in the appointed positions on the task force shall be filled in the same manner as the original appointments were made.

c. Members of the task force shall serve without compensation, but may be reimbursed for all reasonable expenses incurred in the performance of their duties.

4. a. The task force shall organize as soon as may be practicable after the appointment of its members. The Governor shall designate a chairperson from among the members of the task force. The task force shall select a vice-chairperson from among its members and a secretary who need not be a member of the task force.

b. A majority of the membership of the task force shall constitute a quorum for the transaction of task force business. Action may be taken and motions and resolutions adopted by the task force at any meeting thereof by the affirmative vote of a majority of the full membership of the task force.

c. The task force shall meet regularly as it may determine, and shall also meet at the call of the chairperson of the task force or the Governor.

5. It shall be the duty of the task force to:

a. examine, evaluate, and assess the public and private historical resources of the State available for New Jersey history education and public history programming, including, but not limited to, historic sites, structures, facilities, and districts, museums, libraries, archives, collections, exhibits, and records;

b. examine, evaluate, and assess the condition and potential of State-owned historic sites, structures, and facilities, historical museums, libraries, and archives, including consideration of current and projected levels of funding and staffing, staff training, maintenance, improvement, and storage needs, public accessibility, interpretive and other programming needs, and the extent, condition, and needs of existing collections, exhibits, and records;

c. examine, evaluate, and assess the manner by which New Jersey history education, historical museums engaged in public history programming, historic preservation, historical libraries and archives, scholarly historical research and publication, local historical societies, public media historical programs, and related activities are currently funded in the State; conduct a comparative analysis of such funding in other states; assess the availability of federal and private sector funds for those purposes and activities; and make recommendations for appropriate levels of funding therefor by the State;

d. examine, evaluate, and assess the relationship between tourism, historical resources, and New Jersey history education and public history programming in the State, and the elements needed for their effective linkage;

e. examine, evaluate, and assess the potential for economic development based upon efforts to improve New Jersey history education, historical museums engaged in public history programming, historic preservation, historical libraries and archives, scholarly historical research and publication, local historical societies, public media historical programs, and related activities in the State;

f. examine, evaluate, and assess the current and potential public interest in New Jersey history education, historical museums engaged in public history programming, historic preservation, historical libraries and archives, scholarly historical research and publication, local historical societies, public media historical programs, and related activities in the State, the demographic composition of the current public interest, and methods by which such interest may be increased;

g. examine, evaluate, and assess methods for coordinating the efforts of various public and private entities interested in New Jersey history education, historical museums engaged in public history programming, historic preservation, historical libraries and archives, scholarly historical research and publication, local historical societies, public media historical programs, and related activities in the State;

h. examine, evaluate, and assess (1) the resources available to elementary and secondary teachers for instruction on New Jersey history, (2) the manner by which New Jersey history is taught in public institutions of higher education in the State, including, but not limited to, consideration of such factors as curriculum content and quality and available resources, and (3) the need for improving the utilization of historic sites, structures, facilities, and districts, museums, libraries, archives, scholarly historical research and publication, local historical societies, public media historical

programs, and other historical resources, collections, exhibits, and records, in the teaching of New Jersey history in public schools and public institutions of higher education in the State;

i. examine, evaluate, and assess the educational and economic impact of the educational activities of the New Jersey Historical Commission, New Jersey Historic Trust, Historic Sites Council, Historic Preservation Office, Division of Archives and Records Management, State Museum, State Library, Division of Travel and Tourism, and other appropriate State agencies, county cultural and heritage commissions or historic agencies, county historical commissions, local historical societies or similar organizations, museums, libraries, and private nonprofit historical organizations;

j. examine, evaluate, and assess the academic, research, financial, and other needs of professional and avocational historians and other professionals engaged in scholarly research and publication on New Jersey history;

k. examine, evaluate, and assess the preservation, availability, and display of historical collections, exhibits, and records in the State by governmental entities, historical societies, museums, libraries, archives, and other repositories of important historical collections, exhibits, and records; and establish a plan to identify and stabilize these collections, exhibits, and records, provide for their long-term preservation, and provide for public accessibility;

l. examine, evaluate, and assess the availability and quality of basic historical reference works relating to New Jersey history, and establish guidelines for possible State support or endorsement of those works and the publication thereof;

m. examine, evaluate, and assess the media for communicating and conveying New Jersey history to the public, including the use of film, videotape, television, radio, publications, tours, lectures and demonstrations, historical commemorations and re-enactments, and living history dramatic productions, and determine the media that would best communicate and convey a greater understanding of New Jersey history to a wide variety of audiences;

n. compile a list of publications pertinent to the duties and responsibilities of the task force set forth in this act; and

o. hold at least one public hearing for the purposes of soliciting public comment and input on the matters to be considered by the task force pursuant to this act.

6. The task force shall be entitled to call to its assistance and avail itself of the services of such employees of any State, county, or

municipal department, authority, board, bureau, commission, or agency, or Rutgers, The State University or any other public institution of higher education in the State, as it may require and as may be available to it for the purpose of carrying out its duties under this act, to hire consultants, and to employ such professional, clerical, and other staff and incur such traveling and other miscellaneous expenses as it may deem necessary in order to perform its duties, and as may be within the limits of funds appropriated or otherwise made available to it for those purposes. The Department of State shall provide primary staff support to the task force.

7. The task force shall report its findings and conclusions and any recommendations for legislation or administrative action to the Governor and the Legislature within 18 months of the date of enactment of this act, whereupon the task force shall dissolve.

8. This act shall take effect immediately.

Approved December 2, 1994.

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#### CHAPTER 147

AN ACT concerning recipients of general public assistance benefits and supplementing P.L.1947, c.156 (C.44:8-107 et seq.).

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

**C.44:8-111.1 Centralized registry established; updating of information.**

1. The Commissioner of Human Services shall establish a centralized registry in the Division of Family Development of the Department of Human Services to contain the names and Social Security numbers, and such additional identifying information as the commissioner deems appropriate, of recipients of benefits under the "General Public Assistance Law," P.L.1947, c.156 (C.44:8-107 et seq.). Each of the municipal welfare agencies shall provide such information and assistance as the commissioner may request to carry out the provisions of this act. The commissioner shall provide for the periodic updating of the information contained in the registry.

**C.44:8-111.2 Registry information made available; provision for comparison checks.**

2. a. The commissioner shall make the information in the centralized registry established pursuant to section 1 of this act available to those states which are contiguous to New Jersey and shall seek to establish an arrangement for the reciprocal provision of similar information from these states to the Division of Family Development.

b. The commissioner shall also provide for the use of the registry to conduct comparison checks of general public assistance recipient records between municipalities within the State, as well as comparison checks of general public assistance recipient records with those of recipients of aid to families with dependent children benefits under P.L.1959, c.86 (C.44:10-1 et seq.).

**C.44:8-111.3 Report.**

3. The commissioner shall report to the Governor and the Legislature no later than one year after the effective date of this act, and annually thereafter, on the actions taken to carry out the provisions of this act and the results thereof, and shall accompany that report with such recommendations for administrative or legislative actions as the commissioner deems appropriate.

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

5. This act shall take effect immediately.

Approved December 2, 1994.

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**CHAPTER 148**

**AN ACT** allowing certain victims of domestic violence to register to vote without disclosing a street address and supplementing chapter 31 of Title 19 of the Revised Statutes.

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

**C.19:31-3.2 Voter registration; nondisclosure of street address for domestic violence victims.**

1. a. A person who is a victim of domestic violence who has obtained a permanent restraining order against a defendant pursu-



ant to section 13 of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-29) and fears further violent acts by the defendant shall be allowed to register to vote without disclosing the person's street address. Such a person shall leave the space for a street address on the original permanent registration form blank and shall, instead, attach to the form a copy of the permanent restraining order and a note which indicates that the person fears further violent acts by the defendant and which contains a mailing address, post office box or other contact point where mail can be received by the person. Upon receipt of the person's voter registration form, the commissioner of registration in all counties having a superintendent of elections, and the county board of elections in all other counties, shall provide the person with a map of the municipality in which the person resides which shows the various voting districts. The person shall indicate to the commissioner or board, as appropriate, the voting district in which the person resides and shall be permitted to vote at the polling place for that district. If such a person thereafter changes residences, the person shall so inform the commissioner or board by completing a new permanent registration form in the manner described above.

b. Any person who makes public any information which has been provided by a victim of domestic violence pursuant to subsection a. of this section concerning the mailing address, post office box or other contact point of the victim or the election district in which the victim resides is guilty of a crime of the fourth degree.

2. This act shall take effect immediately.

Approved December 2, 1994.

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## CHAPTER 149

AN ACT concerning the administration of the Catastrophic Illness in Children Relief Fund Commission and funding of grants for special health services for handicapped children, amending P.L.1987, c.370 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.1987, c.370 (C.26:2-151) is amended to read as follows:

**C.26:2-151 Catastrophic Illness in Children Relief Fund Commission.**

4. There is established in, but not of, the State Department of Human Services the Catastrophic Illness in Children Relief Fund Commission. The commission shall consist of the Commissioner of the State Department of Health, the Commissioner of the Department of Human Services, the Commissioner of the Department of Insurance, and the State Treasurer, who shall be members ex officio, and seven public members who are residents of this State, appointed by the Governor with the advice and consent of the Senate for terms of five years, two of whom are appointed upon the recommendation of the President of the Senate, one of whom is a provider of health care services to children in this State and two of whom are appointed upon the recommendation of the Speaker of the General Assembly, one of whom is a provider of health care services to children in this State. The five public members first appointed by the Governor shall serve for terms of one, two, three, four and five years, respectively.

Each member shall hold office for the term of his appointment and until his successor has been appointed and qualified. A member of the commission is eligible for reappointment.

Each ex officio member of the commission may designate an officer or employee of his department to represent him at meetings of the commission, and each designee may lawfully vote and otherwise act on behalf of the member for whom he constitutes the designee. Any designation shall be in writing delivered to the commission and filed with the office of the Secretary of State and shall continue in effect until revoked or amended in the same manner as provided for designation.

2. Section 6 of P.L.1987, c.370 (C.26:2-153) is amended to read as follows:

**C.26:2-153 Officers; quorum.**

6. The members shall elect a chairperson and chief executive officer of the commission who shall be one of the public members of the commission. The commission shall by rule determine the term of office of the chairperson and chief executive officer. The members shall elect a secretary and a treasurer who need not be members of the commission and the same person may be elected to serve both as secretary and treasurer.

The powers of the commission are vested in the members thereof in office from time to time and six members of the commission shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the commission at any meeting thereof by the affirmative vote of at least six members of the commission. A vacancy in the membership of the commission shall not impair the right of a quorum to exercise all the powers and perform all the duties of the commission.

The members of the commission shall serve without compensation, but the commission shall reimburse its members for the reasonable expenses incurred in the performance of their duties based upon the monies available in the fund.

The commission shall be appointed within three months after the effective date of this act and shall organize as soon as may be practicable after the appointment of its members.

3. There is appropriated \$2,000,000 from the General Fund to the Department of Health for grants for Special Health Services for Handicapped Children and, notwithstanding the provisions of P.L.1987, c.370 (C.26:2-148 et seq.), the amount appropriated shall be charged to the Catastrophic Illness in Children Relief Fund.

4. This act shall take effect immediately.

Approved December 2, 1994.

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#### CHAPTER 150

AN ACT permitting real estate brokers to deal in mobile or manufactured homes without a motor vehicle dealer's license, amending R.S.39:10-19 and supplementing chapter 15 of Title 45 of the Revised Statutes.

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

1. R.S.39:10-19 is amended to read as follows:

**Dealer's license; eligibility; term; fee.**

39:10-19. No person shall engage in the business of buying, selling or dealing in motor vehicles in this State, unless: a. he is a licensed real estate broker acting as an agent or broker in the sale of mobile homes without their own motor power other than recre-

ation vehicles as defined in section 3 of P.L.1990, c.103 (C.39:3-10.11), or manufactured homes as defined in section 3 of P.L.1983, c.400 (C.54:4-1.4); or b. he is authorized to do so under the provisions of this chapter. The director may, upon application in such form as he prescribes, license any proper person as such dealer. A licensed real estate broker shall be entitled to act as an agent or broker in the sale of a mobile or manufactured home as defined in subsection a. of this section without obtaining a license from the director. For the purposes of this chapter, a "licensed real estate broker" means a real estate broker licensed by the New Jersey Real Estate Commission pursuant to the provisions of chapter 15 of Title 45 of the Revised Statutes. Any sale or transfer of a mobile or manufactured home, in which a licensed real estate broker acts as a broker or agent pursuant to this section, which sale or transfer is subject to any other requirements of R.S.39:10-1 et seq., shall comply with all of those requirements. No person who has been convicted of a crime, arising out of fraud or misrepresentation in the sale or financing of a motor vehicle, shall be eligible to receive a license and each applicant for a license shall at the time such license is issued have established and maintained, or by said application shall agree to establish and maintain, within 90 days after the issuance thereof, a place of business consisting of a permanent building not less than 1,000 square feet in floor space located in the State of New Jersey to be used principally for the servicing and display of motor vehicles with such equipment installed therein as shall be requisite for the servicing of motor vehicles in such manner as to make them comply with the laws of this State and with any rules and regulations made by the director of motor vehicles governing the equipment, use and operation of motor vehicles within the State. A license fee of \$100.00 shall be paid by an applicant upon his initial application for a license. The director may renew an applicant's license from year to year, upon application for renewal on a form prescribed by the director and accompanied each year by a renewal fee of \$100.00. Every license shall expire on March 31 of each year terminating the period for which it is issued. On and after February 1 of each year the director shall issue licenses for the following yearly period to expire on March 31 of the following year.

**C.45:15-17.3 Sanctions for noncomplying sales of mobile homes.**

2. A real estate licensee who acts as an agent or broker in the sale of a mobile or manufactured home, as defined in subsection a. of R.S.39:10-19, in a manner which does not comply with all requirements of R.S.39:10-1 et seq. applicable to the sale of any such mobile or manufactured home, shall, pursuant to R.S.45:15-

17, be subject to sanctions by the New Jersey Real Estate Commission for engaging in conduct which demonstrates incompetency.

**C.45:15-17.4 Rules, regulations.**

3. The New Jersey Real Estate Commission, after consultation with the Director of the Division of Motor Vehicles, 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.

4. This act shall take effect immediately.

Approved December 2, 1994.

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CHAPTER 151

AN ACT concerning the purchase of development potential of buffer zones identified around solid waste facilities or sludge management facilities and supplementing chapter 55D of Title 40 of the Revised Statutes.

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

**C.40:55D-125.1 Solid waste facility buffer zone; definitions.**

1. a. The governing body of any county authorized pursuant to law to establish a development transfer bank, and which has funded that bank at least to the minimum extent required by law, may identify a buffer zone around any solid waste facility or sludge management facility located within the county, and the county development transfer bank, utilizing funds in that bank, may purchase or otherwise acquire the development potential of all or any part of the buffer zone, notwithstanding whether or not the municipality or municipalities within which the buffer zone is located has adopted a development transfer ordinance where authorized pursuant to law. The county development transfer bank may sell, exchange, or otherwise convey any such development potential purchased or otherwise acquired by the county development transfer bank, where authorized pursuant to law.

b. As used in this section:

"Development potential" means the same as that term is defined pursuant to section 3 of P.L.1989, c.86 (C.40:55D-115).

"Development transfer" means the same as that term is defined pursuant to section 3 of P.L.1989, c.86 (C.40:55D-115).

"Solid waste facility" means the same as that term is defined pursuant to section 3 of P.L.1970, c.39 (C.13:1E-3).

"Sludge" means the solid residue and associated liquid resulting from physical, chemical, or biological treatment of domestic or industrial wastewater.

"Sludge management facility" means any facility established for the purpose of managing, processing, or disposing of sludge.

"Wastewater" means residential, commercial, industrial, or agricultural liquid waste, sewage, or stormwater runoff, or any combination thereof, or other residue discharged to or collected by a sewerage system.

2. This act shall take effect immediately.

Approved December 2, 1994.

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#### CHAPTER 152

AN ACT concerning State officers and employees and employment with holders of or applicants for a casino license and amending P.L.1981, c.142.

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

1. 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 prin-

cipal 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 (1) a State officer or employee other than a State officer or employee included in the definition of person, and (2) a member of the immediate family of a State officer or employee, or 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 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.

2. This act shall take effect immediately.

Approved December 2, 1994.

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#### CHAPTER 153

AN ACT concerning the eligibility of prisoners confined in county correctional facilities to participate in work release and vocational training release programs, amending P.L.1968, c.372 and supplementing chapter 8 of Title 30 of the Revised Statutes.

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

1. Section 1 of P.L.1968, c.372 (C.30:8-44) is amended to read as follows:

**C.30:8-44 Work release or vocational training of certain prisoners.**

1. In any county in which the governing body, by ordinance or resolution, as appropriate, approves the application of this act and designates a county work release administrator who may be the sheriff, warden or other person, a person convicted of any offense, except as otherwise provided in section 2 of P.L.1994, c.153 (C.30:8-44.1) and sentenced to the county jail, workhouse or penitentiary of the county may be placed at outside labor or permitted to attend a vocational training course operated or spon-

sored by a public or private agency in the county by order of the court by which the sentence was imposed, or by the assignment judge of the county in which the sentence was imposed, at the time such person is sentenced or at any time thereafter during the term of the sentence. In the case of female offenders a work release order may include permission for release from confinement during specified hours to care for her family. Such order may be revoked by the court which granted it at any time.

The Department of Corrections shall prepare and enforce regulations for the operation of this act in accordance with the provisions thereof.

**C.30:8-44.1 Ineligibility for work release program.**

2. No person confined to a county correctional facility shall be eligible to participate in any work release or vocational training release program if he has been convicted of any of the following:

a. Any crime involving a sexual offense or child molestation as set forth in N.J.S.2C:14-1 et seq.;

b. Any crime endangering the welfare of children or incompetents which concerns sexual conduct which would impair or debauch the morals of the child or an incompetent, as set forth in N.J.S.2C:24-4 and N.J.S.2C:24-7;

c. Any crime involving the manufacture, transportation, sale or possession, with the intent to sell or distribute, of a "controlled dangerous substance" or a "controlled dangerous substance analog," as defined in the "Comprehensive Drug Reform Act of 1986," P.L.1987, c.106 (C.2C:35-1 et al.); or

d. Any crime involving the use of force or the threat of force upon a person or property including: armed robbery, aggravated assault, kidnapping, arson, manslaughter and murder.

3. This act shall take effect immediately.

Approved December 9, 1994.

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**CHAPTER 154**

**AN ACT concerning elections and amending R.S.19:15-8, R.S.19:52-3, and P.L.1953, c.211.**

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

1. R.S.19:15-8 is amended to read as follows:

**Persons allowed in polling place.**

19:15-8. No person shall be allowed or permitted to be present in the polling place or polling room during the progress of the election except the officers connected with the election, the several candidates, the duly authorized challengers, such voters as are present for the purpose of voting and their dependent children, and such officers as may be duly detailed to be present, pursuant to this title, for preserving the peace or enforcing the provisions hereof.

2. R.S.19:52-3 is amended to read as follows:

**Time allowed a voter.**

19:52-3. Where a voter presents himself for the purpose of voting, the election officer shall follow the procedure as now required by this title regarding the eligibility of a person to vote. If such eligibility is established, one of the district election officers shall announce the name of the voter and permit him to pass to the booth of the voting machine for the purpose of casting his vote. No voter shall remain in the voting machine booth longer than two minutes, and having cast his vote the voter shall at once emerge therefrom and leave the polling room; if he shall refuse to leave after the lapse of two minutes he shall be removed by the district election officers. Such election officers shall ascertain the name and address of each voter in the manner now provided by law before he enters the voting machine booth for the purpose of voting. No voter after having entered and emerged from the voting machine booth shall be permitted to reenter the same on any pretext whatever. Only one voter at a time shall be permitted in the voting machine booth to vote. However, a voter shall be permitted to be accompanied into the voting machine booth by a dependent child.

3. Section 10 of P.L.1953, c.211 (C.19:57-10) is amended to read as follows:

**C.19:57-10 Comparison of signatures; investigation of application.**

10. Upon receipt of any request for a civilian absentee ballot or any application for a military absentee ballot from a military service voter who is required under section 3 of this act to be registered in the municipality where he intends to cast such military absentee ballot, the county clerk shall, with the cooperation of the commissioner of registration, cause the signature of the appli-

cant on the request to be compared with the signature of said person appearing on the permanent registration form, or the digitalized image of the voter's signature stored in the data processing equipment of the commissioner of registration or office of the county clerk and accessed by the clerk, in order to determine from such examination and any other available information if the applicant is a voter qualified to cast a ballot in the election in which he desires to vote, and determine in case of a primary election in which political party primary the voter is entitled to vote. The commissioner of registration or the superintendent of elections in counties having a superintendent of elections may investigate any application or request for an absentee ballot.

If after such examination, the county clerk is satisfied that the applicant is entitled to a ballot, he shall mark on the application "Approved." If after such examination the county clerk determines that the applicant is not entitled to a ballot, he shall mark on the application "Disapproved" and shall so notify the applicant, stating the reason therefor.

4. Section 22 of P.L.1953, c.211 (C.19:57-22) is amended to read as follows:

**C.19:57-22 Absentee ballots; commissioner of registration, duties.**

22. The commissioner of registration upon receipt of such information from the county clerk shall mark the applicant's duplicate voting record appearing on the signature copy registers as follows:

In the proper column provided for the recording of the number of the voter's ballot at the election in which the applicant wishes to vote, the commissioner of registration shall record therein in red ink, in the case of a civilian absentee voter, the initial "A," which shall mean that a civilian absentee ballot was delivered or mailed to the applicant by the county clerk, and in the case of a military absentee voter, the initial "M," which shall mean that a military service ballot was delivered or mailed to the applicant by the county clerk.

Whenever the commissioner of registration receives from the county clerk notice that an absentee ballot has been forwarded to a voter, during the time when the signature copy registers are in the custody of other election officials pursuant to this Title, or are in transit to or from such officials, the said commissioner shall, prior to the opening of the polls on election day, forward to each district board of elections a list of all absentee voters to whom bal-

lots have been sent but whose duplicate voting record has not been marked in the manner herein prescribed. Such lists may be prepared in the same manner as a challenge sheet and may be included therein together with other causes for challenge. No district board of elections shall permit any person to vote whose registration record shall be marked with the initial A or M in red ink or whose name shall appear on any list or notice furnished by the commissioner of registration to the effect that such voter has received an absentee ballot.

Whenever a civilian absentee ballot has been delivered to a voter less than 7 days prior to an election and up to 3 p.m. of the day before the election, and the signature copy registers are in the custody of other election officials, or in transit to or from such officials, the county clerk shall prepare a master list of all such ballots, which list shall be transmitted to the commissioner of registration in sufficient time to permit such commissioner to notify the appropriate municipal clerk. The municipal clerk shall notify the judge of the district election board to mark the voter's record accordingly.

5. Section 32 of P.L.1953, c.211 (C.19:57-32) is amended to read as follows:

**C.19:57-32 Duplicate voting records, marking of.**

32. As soon as practicable after such election, the commissioner of registration shall cause to be marked all duplicate voting records which have not been marked with a red "A" or "M" in accordance with this act, to show that an absentee ballot was delivered or forwarded to the respective registered voters. For each civilian absentee ballot, and for each military absentee ballot cast by a military service voter who is required under section 3 of this act to be registered in the municipality where he intends to cast such absentee ballot, that has been voted, received and counted, the commissioner of registration shall also, by reference to the certificates removed from the inner envelopes of such ballots, cause to be written or stamped the word "Voted" in the space provided in the duplicate voting record for recording the ballot number of the voter's ballot in such election, and in the case of a primary election for the general election he shall also cause to be written or stamped in the proper space of the record of voting form the first three letters of the name of the political party primary in which such ballot was voted. The record of voting forms in the original permanent registration binders shall be conformed to the foregoing entries in the duplicate forms.

6. This act shall take effect immediately.

Approved December 9, 1994.

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CHAPTER 155

AN ACT concerning statements on the record at sentencing and amending N.J.S.2C:43-2.

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

1. N.J.S.2C:43-2 is amended to read as follows:

**Sentence in accordance with code; authorized dispositions.**

2C:43-2. Sentence in accordance with code; authorized dispositions.

a. Except as otherwise provided by this code, all persons convicted of an offense or offenses shall be sentenced in accordance with this chapter.

b. Except as provided in subsection a. of this section and subject to the applicable provisions of the code, the court may suspend the imposition of sentence on a person who has been convicted of an offense, or may sentence him as follows:

(1) To pay a fine or make restitution authorized by section 2C:43-3; or

(2) To be placed on probation and, in the case of a person convicted of a crime, to imprisonment for a term fixed by the court not exceeding 364 days to be served as a condition of probation, or in the case of a person convicted of a disorderly persons offense, to imprisonment for a term fixed by the court not exceeding 90 days to be served as a condition of probation; or

(3) To imprisonment for a term authorized by sections 2C:11-3, 2C:43-5, 2C:43-6, 2C:43-7, and 2C:43-8 or 2C:44-5; or

(4) To pay a fine, make restitution and probation, or fine, restitution and imprisonment; or

(5) To release under supervision in the community or to require the performance of community-related service; or

(6) To a halfway house or other residential facility in the community, including agencies which are not operated by the Department of Human Services; or

(7) To imprisonment at night or on weekends with liberty to work or to participate in training or educational programs.

c. Instead of or in addition to any disposition made according to this section, the court may postpone, suspend, or revoke for a period not to exceed two years the driver's license, registration certificate, or both of any person convicted of a crime, disorderly persons offense, or petty disorderly persons offense in the course of which a motor vehicle was used. In imposing this disposition and in deciding the duration of the postponement, suspension, or revocation, the court shall consider the severity of the crime or offense and the potential effect of the loss of driving privileges on the person's ability to be rehabilitated. Any postponement, suspension, or revocation shall be imposed consecutively with any custodial sentence.

d. This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

e. The court shall state on the record the reasons for imposing the sentence, including its findings pursuant to the criteria for withholding or imposing imprisonment or fines under sections 2C:44-1 to 2C:44-3, where imprisonment is imposed, consideration of the defendant's eligibility for release under the law governing parole and the factual basis supporting its findings of particular aggravating or mitigating factors affecting sentence.

f. The court shall explain the parole laws as they apply to the sentence and shall state:

(1) the approximate period of time in years and months the defendant will serve in custody before parole eligibility;

(2) the jail credits or the amount of time the defendant has already served;

(3) that the defendant may be entitled to good time and work credits; and

(4) that the defendant may be eligible for participation in the Intensive Supervision Program.

2. This act shall take effect on the 30th day after enactment.

Approved December 9, 1994.

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## CHAPTER 156

AN ACT concerning certain foreign insurance and surety companies and supplementing Title 17 of the Revised Statutes.

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

**C.17:32-2.1** **Waiving requirements for certain foreign insurers.**

1. Notwithstanding the provisions of any law, rule or regulation to the contrary, the Commissioner of Insurance may waive any requirement that a foreign or alien insurance or surety company which has applied for a certificate of authority to transact business in this State shall, for a period of five years prior to the date of the application for the New Jersey certificate of authority, have been authorized by its state or country of domicile to engage in, and in fact have been actively engaged in, the kind of insurance business for which it seeks the certificate of authority, if the insurer or surety meets all other requirements for admission to this State and upon a finding, by the commissioner, that the line or lines of insurance for which the insurer or surety has applied for a certificate of authority are presently underserved in this State.

2. This act shall take effect immediately.

Approved December 9, 1994.

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CHAPTER 157

AN ACT exempting certain persons from licensure as insurance producers and amending P.L.1987, c.293.

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

1. Section 3 of P.L.1987, c.293 (C.17:22A-3) is amended to read as follows:

**C.17:22A-3** **Licenses required; nonapplicability of provisions.**

3. a. No person shall act as an insurance producer or maintain or operate any office in this State for the transaction of the business of an insurance producer, or receive any commission, brokerage fee, compensation or other consideration for services rendered as an insurance producer without first obtaining a license from the commissioner granting authority for the kind of insurance transacted. No insurance company or licensee shall pay any commission, brokerage fee, compensation or other consider-



ation to any unlicensed person for services rendered in this State as an insurance producer except for services rendered while licensed. Engaging in a single act or transaction of the business of an insurance producer, or holding oneself out to the public or a licensee as being so engaged, shall be sufficient proof of engaging in the business of an insurance producer.

b. The provisions of subsection a. of this section shall not apply to:

(1) the clerical duties of office employees nor the managerial or supervisory duties of general agents or managers who do not negotiate, solicit or effect insurance contracts;

(2) any regular salaried officer, employee or member of a fraternal benefit society licensed and authorized to transact business in this State pursuant to the provisions of P.L.1959, c.167 (C.17:44A-1 et seq.) who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of those contracts no commission or other compensation directly dependent upon the amount of business obtained; or

(3) any agent, representative or member of a fraternal benefit society who devotes, or intends to devote, less than 50 percent of his time to the solicitation and procurement of insurance contracts for that fraternal benefit society. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any fraternal benefit society in an amount of insurance in excess of a total of \$50,000, or, in the case of any other kind or kinds of insurance which the society writes, on the persons of more than 25 individuals and who has received or will receive a commission or other compensation therefrom, shall be presumed to be devoting, or intending to devote, 50 percent of his time to the solicitation or procurement of insurance contracts for that society.

2. This act shall take effect immediately.

Approved December 9, 1994.

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## CHAPTER 158

AN ACT concerning the membership of certain municipal planning boards and amending P.L.1975, c.291.

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

1. Section 14 of P.L.1975, c.291 (C.40:55D-23) is amended to read as follows:

**C.40:55D-23 Planning board membership.**

**14. Planning board membership.**

a. The governing body may, by ordinance, create a planning board of seven or nine members. The membership shall consist of, for convenience in designating the manner of appointment, the four following classes:

Class I--the mayor or the mayor's designee in the absence of the mayor or, in the case of the council-manager form of government pursuant to the Optional Municipal Charter Law, P.L.1950, c.210 (C.40:69A-1 et seq.) or "the municipal manager form of government law" (R.S.40:79-1 et seq.), the manager, if so provided by the aforesaid ordinance.

Class II--one of the officials of the municipality other than a member of the governing body, to be appointed by the mayor; provided that if there be an environmental commission, the member of the environmental commission who is also a member of the planning board as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be deemed to be the Class II planning board member for purposes of this act in the event that there be among the Class IV or alternate members of the planning board both a member of the zoning board of adjustment and a member of the board of education.

Class III--a member of the governing body to be appointed by it.

Class IV--other citizens of the municipality, to be appointed by the mayor or, in the case of the council-manager form of government pursuant to the Optional Municipal Charter Law, P.L.1950, c.210 (C.40:69A-1 et seq.) or "the municipal manager form of government law" (R.S.40:79-1 et seq.), by the council, if so provided by the aforesaid ordinance.

The members of Class IV shall hold no other municipal office, position or employment, except that in the case of nine-member boards, one such member may be a member of the zoning board of adjustment or historic preservation commission. No member of the board of education may be a Class IV member of the planning board, except that in the case of a nine-member board, one Class IV member may be a member of the board of education. If there be a municipal environmental commission, the member of

the environmental commission who is also a member of the planning board, as required by section 1 of P.L.1968, c.245 (C.40:56A-1), shall be a Class IV planning board member, unless there be among the Class IV or alternate members of the planning board both a member of the zoning board of adjustment or historic preservation commission and a member of the board of education, in which case the member common to the planning board and municipal environmental commission shall be deemed a Class II member of the planning board. For the purpose of this section, membership on a municipal board or commission whose function is advisory in nature, and the establishment of which is discretionary and not required by statute, shall not be considered the holding of municipal office.

b. The term of the member composing Class I shall correspond to the mayor's or manager's official tenure, or, if the member is the mayor's designee in the absence of the mayor, the designee shall serve at the pleasure of the mayor during the mayor's official tenure. The terms of the members composing Class II and Class III shall be for one year or terminate at the completion of their respective terms of office, whichever occurs first, except for a Class II member who is also a member of the environmental commission. The term of a Class II or Class IV member who is also a member of the environmental commission shall be for three years or terminate at the completion of his term of office as a member of the environmental commission, whichever occurs first. The term of a Class IV member who is also a member of the board of adjustment or board of education shall terminate whenever he is no longer a member of such other body or at the completion of his Class IV term, whichever occurs first. The terms of all Class IV members first appointed under this act shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first four years after their appointments; provided that the initial Class IV term of no member shall exceed four years. Thereafter, the Class IV term of each such member shall be four years. If a vacancy in any class shall occur otherwise than by expiration of the planning board term, it shall be filled by appointment, as above provided, for the unexpired term. No member of the planning board shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the governing body for cause.

c. In any municipality in which the term of the municipal governing body commences on January 1, the governing body may, by ordinance, provide that the term of appointment of any class of member of the planning board appointed pursuant to this section shall commence on January 1. In any municipality in which the term of the municipal governing body commences on July 1, the governing body may, by ordinance, provide that the term of appointment of any class of member appointed pursuant to this section commence on July 1.

2. This act shall take effect immediately.

Approved December 9, 1994.

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#### CHAPTER 159

AN ACT concerning penalties for violation of certain rules and regulations of the Port Authority of New York and New Jersey and amending P.L.1953, c.171.

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

1. Section 2 of P.L.1953, c.171 (C.32:1-146.7) is amended to read as follows:

**C.32:1-146.7 Violations; penalties; procedures.**

2. Any violation within the State of these rules and regulations set forth in section one hereof shall be punishable by a fine not exceeding ten dollars (\$10.00) or by a term of imprisonment not exceeding 30 days, or by both such fine and imprisonment, except that a violation of these rules and regulations related to the unauthorized offering, soliciting, or providing of ground transportation services or business shall be punishable by a fine of not less than \$500 or more than \$1,000 or by a term of imprisonment not exceeding 30 days or by both such fine and imprisonment. A second or subsequent offense related to the unauthorized offering, soliciting or providing of ground transportation services or business shall be punishable by a fine of not less than \$750 or more than \$1,500 or by a term of imprisonment not exceeding 90 days, or by both such fine and imprisonment. Such a violation shall be tried in a summary way and shall be within the jurisdiction of and may be brought in the Superior Court or municipal court where the offense was committed.

The rules of the Supreme Court shall govern the practice and procedure in such proceedings. Proceedings under this section may be instituted on any day of the week, and the institution of the proceedings on a Sunday or a holiday shall be no bar to the successful prosecution thereof. Any process served on a Sunday or a holiday shall be as valid as if served on any other day of the week.

2. This act shall take effect immediately.

Approved December 9, 1994.

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## CHAPTER 160

AN ACT creating the "Campus Sexual Assault Victim's Bill of Rights" 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:61E-1 Short title.**

1. This act shall be known and may be cited as the "New Jersey Campus Sexual Assault Victim's Bill of Rights Act."

**C.18A:61E-2 "Campus Sexual Assault Victim's Bill of Rights"; development; content.**

2. The Commission on Higher Education shall appoint an advisory committee of experts which shall develop a "Campus Sexual Assault Victim's Bill of Rights" which affirms support for campus organizations which assist sexual assault victims and provides that the following rights shall be accorded to victims of sexual assaults that occur on the campus of any public or independent institution of higher education in the State and where the victim or alleged perpetrator is a student at the institution or when the victim is a student involved in an off-campus sexual assault.

a. The right to have any allegation of sexual assault treated seriously; the right to be treated with dignity; and the right to be notified of existing medical, counseling, mental health or student services for victims of sexual assault, both on campus and in the community whether or not the crime is reported to campus or civil authorities.

"Campus authorities" as used in this act shall mean any individuals or organizations specified in an institution's statement of

campus security policy as the individuals or organizations to whom students and employees should report criminal offenses.

b. The right to have any allegation of sexual assault investigated and adjudicated by the appropriate criminal and civil authorities of the jurisdiction in which the crime occurred, and the right to the full and prompt cooperation and assistance of campus personnel in notifying the proper authorities. The provisions of this subsection shall be in addition to any campus disciplinary proceedings which may take place.

c. The right to be free from pressure from campus personnel to refrain from reporting crimes, or to report crimes as lesser offenses than the victims perceive the crimes to be, or to report crimes if the victim does not wish to do so.

d. The right to be free from any suggestion that victims are responsible for the commission of crimes against them; to be free from any suggestion that victims were contributorily negligent or assumed the risk of being assaulted; to be free from any suggestion that victims must report the crimes to be assured of any other right guaranteed under this policy; and to be free from any suggestion that victims should refrain from reporting crimes in order to avoid unwanted personal publicity.

e. The same right to legal assistance, and the right to have others present, in any campus disciplinary proceeding, that the institution permits to the accused; and the right to be notified of the outcome of any disciplinary proceeding against the accused.

f. The right to full, prompt, and victim-sensitive cooperation of campus personnel in obtaining, securing, and maintaining evidence, including a medical examination if it is necessary to preserve evidence of the assault.

g. The right to be informed of, and assisted in exercising, any rights to be confidentially or anonymously tested for sexually transmitted diseases or human immunodeficiency virus; the right to be informed of, and assisted in exercising, any rights that may be provided by law to compel and disclose the results of testing of sexual assault suspects for communicable diseases.

h. The right to have access to counseling under the same terms and conditions as apply to other students seeking such counseling from appropriate campus counseling services.

i. The right to require campus personnel to take reasonable and necessary action to prevent further unwanted contact of victims with their alleged assailants, including but not limited to, notifying the victim of options for and available assistance in

changing academic and living situations after an alleged sexual assault incident if so requested by the victim and if such changes are reasonably available.

**C.18A:61E-3 Implementation of bill of rights.**

3. In developing the "Campus Sexual Assault Victim's Bill of Rights," established by P.L.1994, c.160 (C.18A:61E-1 et seq.), the committee created pursuant to section 2 of P.L.1994, c.160 (C.18A:61E-2) shall review existing policies and procedures of public and independent institutions of higher education within the State and shall, as appropriate, incorporate those policies into a proposed bill of rights. The committee shall make a recommendation to the commission which incorporates a proposed "Campus Sexual Assault Victim's Bill of Rights." The commission following consultation with the New Jersey Presidents' Council, established pursuant to section 7 of P.L.1994, c.48 (C.18A:3B-7), shall adopt a "Campus Sexual Assault Victim's Bill of Rights." The commission shall make the "Campus Sexual Assault Victim's Bill of Rights" available to each institution of higher education within the State. The governing boards of the institutions shall examine the resources dedicated to services required on each campus to guarantee that this bill of rights is implemented, and shall make appropriate requests to increase or reallocate resources where necessary to ensure implementation.

**C.18A:61E-4 Distribution to students.**

4. Every public and independent institution of higher education within the State shall make every reasonable effort to ensure that every student at that institution receives a copy of the "Campus Sexual Assault Victim's Bill of Rights."

**C.18A:61E-5 Reports of suspected offenses.**

5. Nothing in this act or in any "Campus Assault Victim's Bill of Rights" developed in accordance with the provisions of this act, shall be construed to preclude or in any way to restrict any public or independent institution of higher education in the State from reporting any suspected crime or offense to the appropriate law enforcement authorities.

**C.18A:61E-6 Immunity.**

6. Notwithstanding any other provision of law to the contrary, no public or independent institution of higher education or its employees shall be liable for damages resulting from any exercise of judgment or discretion in connection with the performance of

their duties unless the actions evidence a reckless disregard for the duties imposed by this act. Nothing in this section shall be deemed to grant immunity to any person causing damage by his willful, wanton or grossly negligent act of commission or omission.

7. This act shall take effect on September 1, 1995.

Approved December 13, 1994.

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#### CHAPTER 161

AN ACT concerning the Department of Law and Public Safety and amending P.L.1944, c.20.

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

1. Section 7 of P.L.1944, c.20 (C.52:17A-7) is amended to read as follows:

**C.52:17A-7 Deputies, assistants; at-will, confidential employees.**

7. Deputy Attorneys-General and Assistant Attorneys-General in the Department of Law and Public Safety shall hold their offices at the pleasure of the Attorney-General and shall receive such salaries as the Attorney-General shall from time to time designate. They shall be deemed confidential employees for purposes of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.).

2. This act shall take effect immediately.

Approved December 19, 1994.

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#### CHAPTER 162

AN ACT concerning the transfer of judicial and probation employees from county payrolls to the State payroll, supplementing Title 2B of the Revised Statutes and amending P.L.1993, c.275.

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



**C.2B:11-1 Short title.**

1. Sections 1 through 12 of this act shall be known and may be cited as "The Judicial Employees Unification Act."

**C.2B:11-2 Findings, declarations.**

2. The Legislature finds and declares that:

a. As a result of voter approval in November of 1992 of a constitutional amendment and pursuant to the provisions of the "State Judicial Unification Act," P.L.1993, c.275 (C.2B:10-1 et seq.), the State is to assume certain costs of the judicial system;

b. The most important resource of the judicial system is its personnel;

c. State assumption of the costs of the judicial system offers the opportunity to bring judicial employees, whose positions were previously funded by the 21 counties, into a truly unified judiciary;

d. Both the representatives of the judiciary and the majority representative of the employees of the judiciary have freely and voluntarily entered into a letter of agreement, not part of this act, concerning certain aspects, as described therein, of the employer-employee relations process in the judiciary, which letter is enforceable in accordance with its terms;

e. It is, therefore, altogether fitting and proper to ensure fair treatment of county judicial employees upon their transfer to State service and in the process effectuate a unified judiciary so that its more than 7,800 trial court employees, together with the 1,500 State-level judicial employees, will provide greater effectiveness in the trial court operations, greater accountability in the courts and greater flexibility in meeting the demands placed on the State's judiciary.

**C.2B:11-3 Definitions.**

3. As used in this act,

a. "Transferred employee" means any person employed by a county on December 31, 1994 who becomes an employee of the State pursuant to the provisions of the "State Judicial Unification Act," P.L.1993, c.275 (C.2B:10-1 et seq.).

b. "State judicial employee" means any person, including but not limited to transferred employees, employed by the State on or after January 1, 1995, to provide any services and direct support necessary for the effective operation of the judicial system, including but not limited to employees working for the courts and the law library, employees who act as court aides and those involved in bail processing and probation, and excluding justices and judges as defined in N.J.S.2B:2-4.

c. "Department" means the Department of Personnel.

d. "Medicare" means the coverage provided under Title XVIII of the Social Security Act as amended in 1965 or its successor plan or plans.

**C.2B:11-4 Elections for majority representatives.**

4. Elections to establish majority representatives in new State-wide collective negotiations units will be conducted in accordance with the provisions of P.L.1941, c.100 (C.34:13A-1 et seq.) with such elections to be conducted by the Public Employment Relations Commission (PERC). As soon after the enactment of this act as is practicable, there shall be a 30-day open period during which representation petitions may be filed to determine statewide negotiations units and majority representatives of judicial employees. PERC shall conduct elections as soon thereafter as is practicable. Judges' secretaries, law clerks and Central Appellate Research staff shall not be eligible for representation by employee organizations under provisions of the New Jersey Employer-Employee Relations Act, P.L.1941, c.100 (C.34:13A-1 et seq.) nor shall those employees who are confidential employees or managerial executives under that act. Notwithstanding any representation proceedings which occur pursuant to this section, the judiciary shall continue to negotiate in good faith in county-based negotiations units where collective negotiations agreements for 1994 have not been executed.

**C.2B:11-5 State service applicable; transferred employees; personnel procedures.**

5. a. Subject to the judiciary's rights to create new unclassified positions and make unclassified appointments under court rule, and with the exception of employees of the Administrative Office of the Courts under N.J.S.2A:12-2, and certain positions in the centralized Clerks Offices under subsection b. of N.J.S.2B:13-1 or N.J.S.2B:13-13, the judiciary's personnel practices shall be governed by the State Government Services provisions of Title 11A of the New Jersey Statutes and the rules promulgated thereunder. Transferred employees holding provisional, permanent or probationary civil service status at the time of transferring to State service shall retain such status and attendant rights as are available in those categories under State career service. Transferred employees who were in a provisional title under the provisions of subsection b. of N.J.S.11A:4-13 prior to transferring to State service, shall not be subject to displacement by persons on preexisting State eligibility lists, including special reemploy-

ment, regular employment and open competitive lists, for the title held by the provisional employees. Employees in the unclassified service, pursuant to N.J.S.11A:3-5, N.J.S.2B:5-2 or Rule 1:33 of the Rules Governing the Courts of New Jersey, shall retain such status and attendant rights.

b. No later than December 1, 1994, each county shall submit to the judiciary lists identifying all transferred employees for review by the judiciary and majority representatives of judicial employees. The judiciary shall, within five working days of receipt, provide a copy to the department and the majority representatives of judicial employees. Such lists shall show each transferred employee's current title, civil service status and date of appointment to that title, and the employee's permanent title and date of appointment if the employee is currently holding a provisional appointment and the employee is permanent in another title. Within 120 days from the date of submission of such lists by the judiciary to the department, the department shall announce tests for generating promotional and open competitive lists for judicial positions where provisional appointments have been made or where there is a need for promotional or open competitive tests by request of the appointing authority.

c. Any civil service promotional list affecting transferred employees or employees to be transferred which expires between the date of the enactment of this act and June 30, 1995 shall be extended provided that the life of the list does not have a duration of more than 54 months, except where a newer civil service promotional list is in existence. If the list is a county-based list, the list shall be used only in that particular county. Existing county special or regular reemployment lists will be used when applicable.

d. In the event the judiciary or the department conducts a system-wide classification study and a result thereof is that an existing title is abolished and replaced with another title, employees who were permanent in the abolished title shall be made permanent in the replacement title. Such permanency shall be made effective retroactive to the date of permanency in the abolished title provided the duties, responsibilities and qualifications are substantially comparable to or less than those of the employee's previous title. In the event the duties, responsibilities and qualifications are not substantially comparable to or less than those of the previous title, the employee shall be made permanent in the replacement title as of the date of the reclassification.

e. Notwithstanding the provisions of Title 11A of the New Jersey Statutes and the rules promulgated thereunder, during the period which begins on January 1, 1995 and ends on June 30, 1998, the judiciary, in consultation with the department, shall establish a compensation plan for State judicial employees. Consultation with the department shall involve that department's representation at collective negotiations sessions and review of the possible impact on the executive branch of any compensation plan or pay schedule which the judiciary contemplates.

(1) During this period, the compensation plan, pay schedules, holidays and overtime shall not be preempted from the scope of negotiations for State judicial employees, provided however that the department shall continue to have the responsibility for the classification of positions for State judicial employees and for the administration of the compensation plan and pay schedules which are established for State judicial employees.

(2) On or before September 30, 1997, the commissioner of the department, after taking into consideration the previously negotiated compensation plan, shall prepare a proposed compensation plan for State judicial employees to become effective no later than July 1, 1998, which either adopts the compensation plan developed by the judiciary or proposes modifications in such plan, together with express written reasons therefor. If the judiciary or any of its collective negotiations representatives disagrees with all or any part of such proposed modifications, the disputed issues shall be submitted to a reviewer mutually selected by the commissioner, the Administrative Director of the Courts and a designee of the judiciary's majority representatives. The reviewer shall submit a report and recommendations to the Merit System Board, which shall render the final binding determination prior to June 30, 1998.

(3) Nothing contained in this subsection shall affect any rights of employees in any branch of State government other than the judicial branch, nor shall anything contained herein be construed to create a different scope of negotiations than that applied to executive branch employees, except for the provisions contained in subsection e. (1) which provide a broader scope of negotiations for a limited 42 month period.

f. On or before December 31, 1994, each county shall transfer to the assignment judge for that county the official personnel file of each transferred employee.

**C.2B:11-6 Seniority, benefits, etc. transferred.**

6. a. Transferred employees who become State judicial employees shall receive State credit for years of employment service retroactive to the date utilized by the county of employment as of December 31, 1994, to determine credit for employment service and computation of Supplemental Compensation on Retirement (SCOR).

b. Notwithstanding the provisions of sections 7 and 8 of P.L.1981, c.417 (C.2A:17-56.13 and C.2A:17-56.14), beginning January 1, 1995, the State shall honor and accept all wage garnishment and child support orders entered against all transferred employees at the time of the transfer. Judgment creditors and county probation departments with wage garnishments and child support orders in place against transferred employees will not be required to re-serve the State with the appropriate order or notice to maintain the garnishment or child support order in place at the time of the transition. Each county shall be required 45 days before the transition to provide the State with the names of those transferred employees subject to garnishments, either under court order or by notice of the county probation department, and copies of each order or notice to enable the State to honor the garnishment or child support order. The State shall be required to withhold only 50% of the amount due under the wage garnishment or child support order in effect at the time of transfer for the first pay period under which the transferred employees are placed onto the State payroll. Furthermore, each county shall be solely responsible for complying fully with the terms of all wage garnishment and child support orders in effect up until and through December 31, 1994.

c. Accumulated vacation leave and sick leave for transferred employees shall be transferred and credited to their State leave accounts immediately upon their becoming State judicial employees, but no employee may bring to State service more vacation leave time than that amount normally allotted to that employee in that county in calendar year 1994. Compensatory time and personal or administrative leave as well as accumulated vacation leave in excess of time earned in calendar year 1994 in county-funded employment shall not be transferable to State service but shall remain a county obligation. The determination of how to satisfy this obligation, whether to be granted by the judiciary as paid time off during 1994 or paid to the employee by the county by December 31, 1994, consistent with their policies or contractual obligations, shall be made by the assignment judge. Transferred

employees who become State judicial employees pursuant to this act shall not be considered new employees, and any legislation requiring State residency of new State employees or which limits any benefits of new State employees shall not apply to them.

**C.2B:11-7 Transfer to the Public Employees' Retirement System.**

7. a. Any transferred employee who is a member of a county pension fund or retirement system shall become a member of the Public Employees' Retirement System (PERS) on January 1, 1995, subject to the same conditions and entitled to the same rights and benefits applicable to other employees of the State. Any credit for public service which has been established in the county pension fund or retirement system for the transferred employee shall be credited to the transferred employee under PERS. The contribution rate of the member of PERS shall be determined in the manner set forth in section 25 of P.L.1954, c.84 (C.43:15A-25), except that the number of years of service under the county pension fund or retirement system credited under PERS shall be deducted from the member's age in determining the age upon which the contribution rate is based.

b. No later than May 1, 1995, the county pension fund or retirement system in which a transferred employee is a member shall remit to PERS the accumulated deductions of the transferred employee to the county pension fund or retirement system, and a pro rata part of the employer contributions to the fund or system constituting the employer's obligation to the fund or system for the transferred employee. The actuary of PERS shall determine the liability for service under a county pension fund or retirement system credited under PERS under this act. If the sum of the accumulated transferred employee deductions and the pro rata part of the employer contributions are less than the liability determined by the actuary, the difference shall be paid by the county in the same manner and over the remaining time period for the accrued liability of PERS as provided in section 24 of P.L.1954, c.84 (C.43:15A-24). The county and the county pension fund or retirement system shall provide the Division of Pensions and Benefits any information it may require to administer this act.

**C.2B:11-8 Temporary disability, unemployment insurance benefits.**

8. Immediately upon becoming State judicial employees, all transferred employees shall become eligible for New Jersey Temporary Disability Insurance and Unemployment Insurance benefits consistent with the regulations of those programs. Employment

service with the county shall be credited toward any waiting periods for coverage or eligibility for benefits under New Jersey Temporary Disability Insurance and Unemployment Insurance.

**C.2B:11-9 Health, medical benefits.**

9. a. Immediately upon becoming a State judicial employee, all transferred employees shall receive all the health and medical benefits, including dental and prescription drug plans, on the same basis as other State judicial employees. Employment service with the county shall be credited toward any waiting periods for coverage or eligibility for benefits under the State program and plans for transferred employees who elect coverage at the time they become State judicial employees.

b. All health and medical benefits otherwise provided for in either county-negotiated collective negotiations agreements or in accordance with county past practice or individual county policies or both shall be pre-empted for transferred employees effective January 1, 1995.

**C.2B:11-10 Reimbursement for premium charges for Part A of Medicare.**

10. Any transferred employee who:

- a. was a member of a county pension fund or retirement system on December 31, 1994;
  - b. retires from employment as a State judicial employee;
  - c. is eligible for and receives State payment of the premium or periodic charges for health care benefits after retirement; and
  - d. pays the premium charges under Part A and Part B of the federal Medicare program covering the retirant and the retirant's spouse,
- shall be reimbursed by the State for the premium charges under Part A.

**C.2B:11-11 Health care benefits upon retirement, eligibility.**

11. A transferred employee shall be eligible for health care benefits after retirement on the same basis as other State judicial employees under the "New Jersey State Health Benefits Program Act," P.L.1961, c.49 (C.52:14-17.25 et seq.). In addition, 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 charges for health care benefits after retirement for a transferred employee and the transferred employee's dependents covered under the State health benefits program, but not including survivors, if the transferred employee has at least 10 years of service credited in the Public Employees' Retirement System (PERS) or a county pension fund or retirement system as of December 31,

1994, retires from employment as a State judicial employee, and is at least 62 years of age at the time of retirement, as follows:

a. for a transferred employee formerly employed by a county of the fifth class having a population of not less than 220,000 but not more than 230,000 according to the 1990 federal census, who has at least 15 years of service with the county alone or in combination with service as a State judicial employee credited in PERS, for three years.

b. for a transferred employee formerly employed by a county of the second class having a population of not less than 390,000 but not more than 400,000 according to the 1990 federal census, who has at least 15 years of service with the county alone or in combination with service as a State judicial employee credited in PERS, for 90 days.

c. for a transferred employee formerly employed by a county of the second class having a population of not less than 500,000 but not more than 510,000 according to the 1990 federal census, who has at least 15 years of service with the county alone or in combination with service as a State judicial employee credited in PERS.

d. for a transferred employee formerly employed by a county of the third class having a population of not less than 135,000 but not more than 145,000 according to the 1990 federal census, who is a veteran as defined in section 6 of P.L.1954, c.84 (C.43:15A-6) and has at least 20 years of service with the county alone or in combination with service as a State judicial employee credited in PERS.

e. for a transferred employee formerly employed by a county of the second class having a population of not less than 420,000 but not more than 430,000 according to the 1990 federal census, who has at least 15 years of service with the county alone or in combination with service as a State judicial employee credited in PERS, and shall reimburse the employee for premium charges under Part B of the federal Medicare program covering the retired employee and the employee's spouse.

f. for a transferred employee formerly employed by a county of the third class having a population of not less than 60,000 but not more than 70,000 according to the 1990 federal census, who has at least 15 years of service with the county alone or in combination with service as a State judicial employee credited in PERS, and shall reimburse the employee for premium charges under Part B of the federal Medicare program covering the retired employee and the employee's spouse.

g. for a transferred employee formerly employed by a county of the third class having a population of not less than 90,000 but



not more than 100,000 according to the 1990 federal census, who has at least 20 years of service with the county alone or in combination with service as a State judicial employee credited in PERS.

**C.2B:11-12 Right to review, void certain adjustments.**

12. For the purposes of application of all provisions of this act, the judiciary shall review and may void as against public policy any extraordinary adjustments made during 1994 in employee salary, other compensation or benefits or computation of years of credit of employment services, except that this shall not apply to any collectively negotiated agreement.

13. Section 3 of P.L.1993, c.275 (C.2B:10-3) is amended to read as follows:

**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 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.

14. This act shall take effect immediately.

Approved December 19, 1994.

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### CHAPTER 163

AN ACT concerning certain funeral insurance policies and amending P.L.1993, c.147.

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

1. Section 1 of P.L.1993, c.147 (C.45:7-82) is amended to read as follows:

**C.45:7-82 Definitions used in C.45:7-32 et seq., C.45:7-65.3 and C.45:7-82 et al.**

1. As used in this act, in P.L.1952, c.340 (C.45:7-32 et seq.) and in section 18 of P.L.1960, c.184 (C.45:7-65.3):

"Assigned funeral insurance policy" means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"At need funeral arrangements" means funeral arrangements made with the survivors or personal representative of a person who has already died for that person's funeral.

"Board" means the State Board of Mortuary Science of New Jersey.

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

“Deliver” or “delivery” means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person paying the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:

(1) Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in this act, notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

“Funeral arrangements” means funeral and burial plans made through a mortuary, including the selection of plans for the furnishing of funeral goods and services pursuant to a completed plan of bodily disposition and the act of offering the opportunity to purchase or to enroll in a prepaid funeral agreement by the mortuary.

“Funeral insurance policy” means any newly issued funeral insurance policy or assigned funeral insurance policy.

“Funeral trust” means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or P.L.1985, c.147 (C.3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

“Guaranteed price agreement” means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated goods and services in the future, regardless of whether or not the retail value of those goods and services exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.

“Intended funeral recipient” means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

**"Newly issued funeral insurance policy"** means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

**"Non-guaranteed price agreement"** means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider will apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the intended funeral recipient, but which agreement shall not bind the provider to provide the goods and services if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.

**"Payable on death account" or "P.O.D. account"** means an account payable, on request to the purchaser or intended funeral recipient of a prepaid funeral agreement during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

**"Pooled trust"** means a pooled trust account established pursuant to P.L.1985, c.147 (C.3B:11-16 et al.).

**"Preneed funeral arrangements"** means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

**"Prepaid funeral agreement"** means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

**"Prepaid funeral goods"** means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral

agreement. Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

“Prepaid funeral services” means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.

“Provider” means a person, firm or corporation duly licensed and registered pursuant to the “Mortuary Science Act,” P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

- (1) Operating a duly registered mortuary in accordance with P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations promulgated thereunder;
- (2) Having his or its business and practice based within the physical confines of the registered mortuary; and
- (3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

“Purchaser” means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

“Retail installment contract” means an agreement to pay the purchase price of goods or services in two or more installments over a period of time.

“Statement of funeral goods and services” means the itemized written statement required to be given to each person making funeral arrangements in accordance with the regulations of the Federal Trade Commission (16 C.F.R. 453.2) and the board (N.J.A.C.13:36-9.8).

2. Section 3 of P.L.1993, c.147 (C.45:7-84) is amended to read as follows:

**C.45:7-84 Requirements for provider of certain funeral arrangements, agreements.**

3. No provider shall enter into, or offer to enter into, a prepaid funeral agreement, or provide or offer to provide a funeral trust or funeral insurance policy in connection therewith, unless:

- a. At the same time he makes preneed funeral arrangements for the intended funeral recipient on a statement of funeral goods and services;
- b. He meets all requirements with respect to the making of at need funeral arrangements as otherwise required by law;
- c. The insurance policy or annuity contract to be provided or offered as a newly issued funeral insurance policy complies with the provisions of section 24 of P.L.1993, c.147 (C.17B:17-5.1);
- d. If a newly issued funeral insurance policy is provided or offered, he is duly licensed as an insurance producer pursuant to P.L.1987, c.293 (C.17:22A-1 et seq.).

3. Section 19 of P.L.1993, c.147 (C.2A:102-18) is amended to read as follows:

**C.2A:102-18 Definitions used in C.2A:102-13 et seq.**

19. As used in P.L.1957, c.182 (C.2A:102-13 et seq.):

“Assigned funeral insurance policy” means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured’s death in connection with a prepaid funeral agreement.

“Deliver” or “delivery” means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person pay-

ing the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:

(1) Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in P.L.1957, c.182 (C.2A:102-13 et seq.), notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

“Funeral insurance policy” means any newly issued funeral insurance policy or assigned funeral insurance policy.

“Funeral trust” means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or P.L.1985, c.147 (C.3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

“Intended funeral recipient” means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

“Newly issued funeral insurance policy” means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured’s death in connection with a prepaid funeral agreement.

“Payable on death account” or “P.O.D. account” means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement, during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

“Pooled trust” means a pooled trust account established pursuant to P.L.1985, c.147 (C.3B:11-16 et al.).

“Preneed funeral arrangements” means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

**"Prepaid funeral agreement"** means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

**"Prepaid funeral goods"** means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

**"Prepaid funeral services"** means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

**"Provider"** means a person, firm or corporation duly licensed and registered pursuant to the "Mortuary Science Act," P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of



funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

“Purchaser” means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

4. Section 22 of P.L.1993, c.147 (C.3B:11-16.1) is amended to read as follows:

**C.3B:11-16.1 Definitions used in C.3B:11-16 et al.**

22. As used in P.L.1985, c.147 (C.3B:11-16 et al.):

“Assigned funeral insurance policy” means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured’s death in connection with a prepaid funeral agreement.

“Deliver” or “delivery” means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person paying the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:

(1) Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in P.L.1985, c.147 (C.3B:11-16 et al.), notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

“Funeral insurance policy” means any newly issued funeral insurance policy or assigned funeral insurance policy.

“Funeral trust” means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c.182 (C.2A:102-13 et seq.) or P.L.1985, c.147 (C.3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

“Intended funeral recipient” means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

“Newly issued funeral insurance policy” means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured’s death in connection with a prepaid funeral agreement.

“Payable on death account” or “P.O.D. account” means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement, during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

“Pooled trust” means a pooled trust account established pursuant to P.L.1985, c.147 (C.3B:11-16 et al.).

“Preneed funeral arrangements” means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

“Prepaid funeral agreement” means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or

services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

“Prepaid funeral goods” means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

“Prepaid funeral services” means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

“Provider” means a person, firm or corporation duly licensed and registered pursuant to the “Mortuary Science Act,” P.L.1952, c.340 (C.45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c.340 (C.45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

“Purchaser” means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

5. This act shall take effect immediately.

Approved December 20, 1994.

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#### CHAPTER 164

AN ACT concerning the establishment of paternity, amending and supplementing P.L.1983, c.17 and Title 26 of the Revised Statutes and repealing section 14 of P.L.1983, c.17.

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

1. Section 4 of P.L.1983, c.17 (C.9:17-41) is amended to read as follows:

**C.9:17-41 Establishment of parent-child relationship; termination of natural parental rights; action.**

4. The parent and child relationship between a child and:

a. The natural mother, may be established by proof of her having given birth to the child, or under this act;

b. The natural father, may be established by proof that his paternity has been adjudicated under prior law; under the laws governing probate; by giving full faith and credit to a determination of paternity made by any other state, whether established through voluntary acknowledgment or through judicial or administrative processes; by a Certificate of Parentage as provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) that is executed by the father prior to or after the birth of a child, and filed with the appropriate State

agency; by a default judgment or order of the court; by an order of the court based on a blood test or genetic test that meets or exceeds the specific threshold probability as set by the State creating a conclusive presumption of paternity; or under this act;

c. An adoptive parent, may be established by proof of adoption;

d. The natural mother or the natural father, may be terminated by an order of a court of competent jurisdiction in granting a judgment of adoption or as the result of an action to terminate parental rights.

e. The establishment of the parent and child relationship pursuant to subsections a., b., and c. of this section shall be the basis upon which an action for child support may be brought by a party and acted upon by the court without further evidentiary proceedings.

2. Section 11 of P.L.1983, c.17 (C.9:17-48) is amended to read as follows:

**C.9:17-48 Consent conference; blood, genetic tests; presumption.**

11. a. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, a consent conference shall be held by the Superior Court, Chancery Division, Family Part intake service, the county probation department or the county welfare agency. A court appearance shall be scheduled in the event that a consent agreement cannot be reached.

b. On the basis of the information produced at the conference, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(1) That the action be dismissed with or without prejudice; or

(2) That the alleged father voluntarily acknowledge his paternity of the child.

c. If the parties accept a recommendation made in accordance with subsection b. of this section, which has been approved by the court, judgment shall be entered accordingly.

d. If a party refuses to accept a recommendation made under subsection b. of this section or the consent conference is terminated because it is unlikely that all parties would accept a recommendation pursuant to subsection b. of this section, and blood tests or genetic tests have not been taken, the court shall require the parties to submit to blood tests or genetic tests if the court determines that there is an articulable reason for suspecting that the alleged father is the natural father. The tests shall be scheduled within 10 days and shall be per-

formed by qualified experts. Thereafter the Family Part intake service, with the approval of the court, shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial, except when the results of the blood test or genetic test indicate that the specific threshold probability as set by the State to establish paternity has been met or exceeded.

If the results of the blood test or genetic test indicate that the specific threshold probability as set by the State to establish paternity has been met or exceeded, the results shall be received in evidence as a conclusive presumption of paternity and no additional foundation testimony or proof of authenticity or accuracy shall be required to establish paternity. In actions based on allegations of fraud or inaccurate analysis, the court shall require that the additional blood test or genetic test be scheduled within 10 days and be performed by qualified experts. The test shall be paid for by the moving party.

If a party objects to the blood test or genetic test, the party shall make the objection to the appropriate agency, in writing, within 10 days of receipt of the results.

e. The guardian ad litem may accept or refuse to accept a recommendation under this section.

f. (Deleted by amendment, P.L.1994, c.164).

g. No evidence, testimony or other disclosure from the consent conference shall be admitted as evidence in a civil action except by consent of the parties. However, blood tests or genetic tests ordered pursuant to subsection d. of this section may be admitted as evidence.

h. The refusal to submit to a blood test or genetic test required pursuant to subsection d. of this section, or both, shall be admitted into evidence and shall give rise to the presumption that the results of the test would have been unfavorable to the interests of the party who refused to submit to the test. Refusal to submit to a blood test or genetic test, or both, is also subject to the contempt power of the court.

3. R.S.26:8-28 is amended to read as follows:

**Birth certificate required; Social Security numbers of parents; blood type of child.**

26:8-28. a. Within five days after each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of the birth filled out with durable black or blue ink in a legible manner.

b. In accordance with the provisions of the federal "Family Support Act of 1988," Pub.L.100-485, and section 13721 of

Pub.L.103-66 (42 U.S.C. §666), as part of the birth record, all information required by the State IV-D agency pursuant to section 7 of P.L.1994, c.164 (C.26:8-28.1) shall be recorded on a separate form provided or approved by the State registrar pursuant to subsection c. of R.S.26:8-24, and filed with the State IV-D agency pursuant to R.S.26:8-30 and R.S.26:8-31 for the establishment and enforcement of child support matters in the State. For the purposes of this subsection, "State IV-D agency" means the agency in the Department of Human Services designated to administer the Title IV-D Child Support Program.

c. The State registrar shall require each parent to provide his Social Security number in accordance with procedures established by the State registrar. The Social Security numbers furnished pursuant to this section shall be used exclusively for child support enforcement purposes.

d. The certificate of birth shall include the blood type of the child.

4. R.S.26:8-30 is amended to read as follows:

**Duty of physician or midwife in attendance at birth; Certificate of Parentage.**

26:8-30. The attending physician, midwife or person acting as the agent of the physician or midwife, who was in attendance upon the birth shall be responsible for the proper execution and return of a certificate of birth, which certificate shall be upon the form provided or approved by the State department, and for making available to the mother and natural father a Certificate of Parentage along with related information as required by the State IV-D agency. It shall be the responsibility of personnel at the hospital or birthing facility to offer an opportunity to the child's natural father to execute a Certificate of Parentage. Failure of the natural father or mother to execute the Certificate of Parentage and the date of the request shall be noted on the Certificate of Parentage. The Certificate of Parentage shall be filed with the State IV-D agency or its designee. The provision of services related to paternity acknowledgment shall not be required when a legal action is pending in the case, such as adoption, or State law prohibits such intervention.

For the purposes of this section, "State IV-D agency" means the agency in the Department of Human Services designated to administer the Title IV-D Child Support Program.

5. R.S.26:8-31 is amended to read as follows:

**New Jersey State Library**

**Certificate of birth or parentage when no physician or midwife in attendance.**

26:8-31. In case there is no physician, midwife, or person acting as the agent of the physician or midwife, in attendance upon the birth, it shall be the duty of one of the following persons in the order named to file the birth certificate with the local registrar and file the Certificate of Parentage with the State IV-D agency or its designee:

- a. The father or mother of the child;
- b. The manager or superintendent of the public or private institution in which the birth occurred.

**C.9:17-52.1 Default order, effect.**

6. A default order shall be entered in a contested paternity action upon a showing that proper notice has been served upon the party and the party has failed to appear at a hearing or trial; or has failed to respond to a notice or order that required a response within a specific period of time. A default order entered pursuant to this section shall be determinative for purposes of establishing the existence of paternity when proper notice has been served and a sworn statement by the mother indicating the parentage of the child has been executed.

**C.26:8-28.1 Contents of Certificate of Parentage; Social Security number collection.**

7. A Certificate of Parentage may serve to satisfy the method of collection of Social Security numbers as required pursuant to subsection c. of R.S.26:8-28 and shall serve as the voluntary acknowledgement of paternity by a father. The Certificate of Parentage shall contain, at a minimum, the following information:

- a. a sworn statement by the father that he is the natural father of the child;
- b. the Social Security numbers and addresses of the father and mother;
- c. the signature of the mother and father authenticated by a witness or notary; and
- d. instructions for filing the Certificate of Parentage with the agency designated by the State IV-D agency.

In addition, the State IV-D agency, in cooperation with birthing centers and hospitals providing maternity services, shall provide written information to the father and mother of the child explaining the implications of signing a Certificate of Parentage, including the parental rights, responsibilities and financial obligations, as well as the availability of paternity establishment services and child support enforcement services.



**Repealer.**

8. Section 14 of P.L.1983, c.17 (C.9:17-51) is repealed.

9. This act shall take effect immediately.

Approved December 20, 1994.

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**CHAPTER 165**

AN ACT concerning power vessels operating on the nontidal waters of this State and amending the "Power Vessel Act," P.L.1954, c.236.

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

1. Section 9 of P.L.1954, c.236 (C.12:7-34.9) is amended to read as follows:

**C.12:7-34.9 Possession, exhibition of license; violations, fines, penalties.**

9. a. Any person operating any power vessel on the nontidal waters of this State shall possess at all times a proper license issued pursuant to section 4 of P.L.1954, c.236 (C.12:7-34.4), and shall, when requested so to do, exhibit the same to any officer of the Bureau of Marine Law Enforcement, Division of State Police or other peace officer of this State. Failure of an operator to so exhibit such license upon demand, shall be presumptive evidence that such person is not a licensed operator.

b. A person who violates the provisions of subsection a. of this section regarding the failure to possess a license issued pursuant to section 4 of P.L.1954, c.236 (C.12:7-34.4), shall be subject to a fine in an amount not to exceed \$500 or a term of imprisonment not to exceed 60 days, or both. However, if that person has never been licensed to operate a power vessel on the nontidal waters of this State or any other jurisdiction, that person shall be subject to a fine of not less than \$200 and, in addition, the court shall issue an order to the Director of the Division of Motor Vehicles requiring the director to refuse to issue a license to operate a power vessel on the nontidal waters of this State to that person for a period of not less than 180 days.

c. A person who violates the provisions of subsection a. of this section regarding the possession and exhibition of an opera

tor's license issued to that person pursuant to the provisions of section 4 of P.L.1954, c.236 (C.12:7-34.4), who can exhibit to the court before which the person is summoned to answer to the charge, a valid operator's license issued to that person, which was valid on the day that person was charged, shall be subject to a fine in an amount not to exceed \$100.00, in addition to any reasonable court costs the court may impose. Notwithstanding the provisions of this subsection, the court may in its discretion, dismiss a charge regarding the failure to exhibit an operator's license brought pursuant to the provisions of this act.

d. The penalties provided for pursuant to subsections b. and c. of this section shall not be applicable in cases where failure to have actual possession of the operator's license is due to an administrative or technical error by the Division of Motor Vehicles.

2. This act shall take effect immediately.

Approved December 20, 1994.

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## CHAPTER 166

AN ACT concerning the membership of the Board of Pharmacy of the State of New Jersey and amending R.S.45:14-1 and R.S.45:14-3.

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

1. R.S.45:14-1 is amended to read as follows:

**Board of Pharmacy; membership; selection.**

45:14-1. The board of pharmacy of the State of New Jersey, hereinafter in this chapter designated as the "board", established by an act entitled "An act to regulate the practice of pharmacy in this State," approved March nineteenth, one thousand nine hundred and one (L.1901, c.51, p.85), as amended and supplemented, is continued. The board shall consist of nine members, two of whom shall be public members and one of whom shall be a State executive department member appointed pursuant to the provisions of P.L.1971, c.60 (C.45:1-2.1 et seq.). Each of the remaining six members shall be appointed from time to time as hereinafter directed by the Governor, shall be a citizen of and an

able and skilled registered pharmacist in this State, shall have been registered as a pharmacist in this State for at least five years prior to his appointment, shall be actually engaged either in conducting or directly supervising a pharmacy at the time of his appointment and shall continue in the practice of pharmacy during the term of his office. No member shall be a teacher or instructor in any college of pharmacy. Upon the expiration of the term of office of a member, his successor shall be appointed by the Governor for a term of five years from June first of the year in which the term of such former member expired, and the terms of not more than two members who are registered pharmacists shall expire in any year. Any vacancy in the membership of the board shall be filled for the unexpired term in the manner provided for an original appointment; and the New Jersey Pharmaceutical Association, the New Jersey Council of Chain Drug Stores, the Garden State Pharmacy Owners Association, and the New Jersey Society of Hospital Pharmacists may each annually send to the Governor the names of four registered pharmacists engaged in the practice of pharmacy in this State and having the qualifications required by this section, one of whom the Governor may appoint to fill any vacancy occurring in the board.

In appointing members to the board to fill vacancies of members who are eligible to practice pharmacy, the Governor shall appoint members in such a manner so that the membership of the board includes at all times at least one pharmacist who represents a chain drug retailer, one pharmacist who works in a hospital, and one pharmacist who owns a pharmacy.

As used in this section, "chain drug retailer" means a corporation which operates seven or more retail pharmacies, drugstores or pharmacy departments under a common trade name.

2. R.S.45:14-3 is amended to read as follows:

**Board officers, functions.**

45:14-3. The board shall elect a president, a secretary who may or may not be a member of the board, and a treasurer, and may make by-laws and rules for the proper fulfillment of its duties under this chapter. It shall meet on the third Thursday of January, April, July and October, in the city of Trenton, and at such other times and places as may be required. It shall examine into all applications for registration, and grant certificates of registration to all persons whom it shall judge on examination to be properly qualified to practice pharmacy. The examination shall

include the subjects of materia medica, pharmacy, chemistry and toxicology. It shall keep a book of registration in which shall be entered the names and places of business of all persons registered under this chapter, and also a book of record of all its official transactions, which books shall be legal evidence of such transactions in any court of law. It may examine into all cases of alleged violations of this chapter and shall cause the prosecution of all persons not complying therewith; and it shall annually report to the governor and to the New Jersey Pharmaceutical Association, the New Jersey Council of Chain Drug Stores, the Garden State Pharmacy Owners Association, and the New Jersey Society of Hospital Pharmacists, on or before the first day of November in each year, upon the condition of pharmacy in the state, which report shall embrace a detailed statement of the receipts and expenditures of the board.

3. This act shall take effect immediately.

Approved December 20, 1994.

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#### CHAPTER 167

AN ACT authorizing municipal ordinances concerning the removal of certain material from dwellings or lands lying within municipal limits and supplementing and amending P.L.1943, c.71.

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

**C.40:48-2.13a Municipal ordinance requiring solid waste removal.**

1. The governing body of a municipality may make, enforce, amend and repeal an ordinance requiring the owner or tenant of a dwelling or land located within the municipality, when it is necessary and expedient for the preservation of the public health, safety, or general welfare, to remove from that dwelling or land or to destroy any solid waste stored in such a way that it is accessible to and likely to be strewn about by animals such as but not limited dogs, cats, raccoons, birds, or rodents. The ordinance shall require removal or destruction of the solid waste within a specific period of time which shall be not less than 72 hours or more than 10 days after the owner or tenant has received written notice to that effect. The governing body of a municipality also may provide in the ordinance for the removal or destruction of the solid waste by or under

the direction of an officer or code enforcement officer of the municipality when the owner or tenant refuses or neglects to remove or destroy the solid waste in the manner and within the time required by the ordinance, and provide for the imposition of penalties for the violation of the ordinance.

2. Section 1 of P.L.1943, c.71 (C.40:48-2.13) is amended to read as follows:

**C.40:48-2.13 Removal, destruction of brush, weeds, debris, etc.; ordinance authorized.**

1. The governing body of every municipality shall have power to make, enforce, amend and repeal ordinances requiring the owner or tenant of a dwelling or lands lying within the limits of such municipality, where it shall be necessary and expedient for the preservation of the public health, safety, general welfare or to eliminate a fire hazard, to remove from such lands or dwelling or destroy brush, weeds, including ragweed, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash and debris within 10 days after notice to remove or destroy the same, and to provide for the removal or destruction of the same by or under the direction of some officer of the municipality in cases where the owner or tenant shall have refused or neglected to remove or destroy same in the manner and within the time provided above, and to provide for the imposition of penalties for the violation of any such ordinance. For the purposes of this section, garbage shall not include solid waste stored in such a way that it is accessible to and likely to be strewn about by animals such as but not limited to dogs, cats, raccoons, birds or rodents pursuant to section 1 of P.L.1994, c.167 (C.40:48-2.13a).

3. Section 2 of P.L.1943, c.71 (C.40:48-2.14) is amended to read as follows:

**C.40:48-2.14 Cost for removal; lien.**

2. In all cases where brush, weeds, including ragweed, dead and dying trees, stumps, roots, obnoxious growth, filth, garbage, trash and debris are destroyed or removed from any dwelling or lands under any ordinance adopted pursuant to section 1 of P.L.1943, c.71 (C.40:48-2.13) or section 1 of P.L.1994, c.167 (C.40:48-2.13a), by or under the direction of an officer or code enforcement officer of the municipality, such officer or code enforcement officer shall certify the cost thereof to the governing body, which shall examine the certificate, and if found correct shall

cause the cost as shown thereon to be charged against said dwelling or lands; the amount so charged shall forthwith become a lien upon such dwelling or lands and shall be added to and become and form part of the taxes next to be assessed and levied upon such dwelling or lands, the same to bear interest at the same rate as taxes, and shall be collected and enforced by the same officers and in the same manner as taxes.

4. This act shall take effect immediately.

Approved December 20, 1994.

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#### CHAPTER 168

AN ACT concerning the appointment of a superintendent and assistant superintendent by the Palisades Interstate Park Commission and supplementing Title 32 of the Revised Statutes.

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

**C.32:14-4.3 Appointment of superintendant, assistant superintendant.**

1. Any other law, rule or regulation to the contrary notwithstanding, the commission may, by resolution, appoint a superintendent and an assistant superintendent, who shall be qualified by training and experience for the duties of their offices. The superintendent and the assistant superintendent shall be in the State unclassified service and shall receive those salaries as shall be authorized by the commission.

**C.32:14-4.4 Removal; process.**

2. The commission may remove any person appointed pursuant to the provisions of this act after notice and an opportunity to be heard.

3. This act shall take effect immediately.

Approved December 20, 1994.

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#### CHAPTER 169

AN ACT concerning free public education for a child whose parent or guardian is called into active military service and amending N.J.S.18A:38-1 and N.J.S.18A:38-3.

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;

The provisions of this section requiring proof of support, custody or tenancy shall not apply to a person keeping a child in his home whose parent or guardian is a member of the New Jersey National Guard or a member of the reserve component of the armed forces of the United States and who has been ordered into active military service in any of the armed forces of the United States in time of war or national emergency. In such a situation, the child shall be eligible to enroll in the district in which he is being kept, and no tuition shall be charged by the district. Following the return of the child's parent or guardian from active military service, the child's eligibility for enrollment without tuition in the district in which he or she is being kept shall cease at the end of the current school year;

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. N.J.S.18A:38-3 is amended to read as follows:

**Admission for nonresident of school district; parent on active duty.**

18A:38-3. a. Any person not resident in a school district, if eligible except for residence, may be admitted to the schools of the district with the consent of the board of education upon such terms, and with or without payment of tuition, as the board may prescribe.

b. Any person not resident in a school district, if eligible except for residence, and if that person previously was a resident of the district, shall be admitted to the schools of the district without payment of tuition if that person's parent or guardian is a member of the New Jersey National Guard or a member of the reserve component of the armed forces of the United States and has been ordered into active military service in any of the armed forces of the United States in time of war or national emergency, resulting in the relocation of the student out of the district. A school district admitting a student pursuant to this subsection shall not be obligated for transportation costs.

3. This act shall take effect immediately.

Approved December 20, 1994.

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CHAPTER 170

AN ACT concerning certain voter registration records, amending R.S.19:31-7, R.S.19:31-23, R.S.19:31-24, and R.S.19:31-26, and supplementing chapter 31 of Title 19 of the Revised Statutes.

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

**C.19:31-10.1 Voter registration records; electronic data processing, use.**

1. In those counties in which the commissioner of registration employs electronic data processing equipment to file and store registration information for the voters registered in the county, the commissioner may eliminate use of original permanent registration binders, as provided for in R.S.19:31-10, and use in their place the electronic data processing equipment if:

a. the voter registration information for each voter that is filed and stored in the electronic data processing equipment is made identical with the voter registration information for each voter

that is required to be in the original permanent registration binder pursuant to R.S.19:31-3;

b. the voting information for each voter that is required to be entered in the original permanent registration binders after each election, pursuant to R.S.19:31-23, is entered into the appropriate voter registration records of each voter contained in the electronic data processing equipment after each election; and

c. the commissioner maintains in a permanent and separate file the original completed voter registration form of each voter, and any new or amended forms filed by that voter.

**C.19:31-3.3 Digitalized images of signatures, use.**

2. In those counties in which the commissioner of registration employs data processing equipment capable of creating or receiving, storing, and printing a digitalized image of the signature of a person registered to vote, the commissioner may eliminate the use of the duplicate permanent registration binders and may authorize and direct the use at the polls in place of such a binder, as a signature copy register for the purposes of this Title, Title 40 of the Revised Statutes, and N.J.S.18A:14-47, of a polling record which identifies on each page the election at which the record is used, which indicates for each registrant the name and address of the registrant and identifies the municipality and the particular election district therein from which the person is registered, and which includes adjacent to the registrant's name and address an imprint of the digitalized image of the registrant's signature and sufficient space, immediately to the left or right of that imprint, for the registrant to sign the record, which imprint and signature shall be used as the signature comparison record as prescribed by this Title. The polling record shall also include for each registrant sufficient space for the notation of remarks as provided by R.S.19:15-23 and for the recording of any challenge and the determination thereof by the district board as provided by R.S.19:15-24, or by other elections officials charged with the same duties as the district board in connection with the conduct of an election. In the case of a primary election, the polling record shall also indicate for each registrant the political party, if any, of which the registrant is a member for the purpose of voting at that primary election.

Polling records for each election shall be prepared by the commissioner of registration not later than the 14th day preceding the election. At each election, the delivery of the polling records to the municipal clerk or secretary of the board of education in a

Type II school district, as appropriate, and to the district boards or other elections officials charged with the same duties as the district board in connection with the conduct of an election, and the return of those records by the district boards or such other elections officials to the commissioner of registration, shall be made in the manner and in accordance with the schedule prescribed by law for the delivery and return at that election of the signature copy registers.

The commissioner of registration shall retain the polling records for any election for a period of not less than six years following that election.

3. R.S.19:31-7 is amended to read as follows:

**Registration by municipal clerks.**

19:31-7. For the convenience of the voters the respective municipal clerks or their duly authorized clerk or clerks in all municipalities shall also be empowered to register applicants for permanent registration up to and including the twenty-ninth day preceding any election and after any such election in the manner indicated above, subject to such rules and regulations as may be prescribed by the commissioner, in counties having a superintendent of elections, and the county board in all other counties. Duly authorized clerk as used in this section shall mean a clerk who resides within the municipality and has been approved by the commissioner or the county board as the case may be. For this purpose the commissioner shall forward to each municipal clerk a sufficient supply of registration forms. The commissioners shall keep a record of the serial numbers of these forms and shall periodically make such checks as are necessary to accurately determine if all such forms are satisfactorily accounted for. Each municipal clerk shall transmit daily to the commissioner all of the filled out registration forms that he may have in his office at the time.

4. R.S.19:31-23 is amended to read as follows:

**Record of voting; maintenance of forms.**

19:31-23. Following each election the commissioner shall cause the record of voting as shown on the record of voting forms in the signature copy registers or, in counties in which polling records are used in place of those signature copy registers pursuant to section 2 of P.L.1994, c.170 (C.19:31-3.3), as shown in the polling records, to be entered on the record of voting forms in the

original permanent registration binders or to be entered into electronic data processing equipment used to file and store voter information for the voters registered in a county, pursuant to section 1 of P.L.1994, c.170 (C.19:31-10.1). An entry of any record of voting which shall have been made by means of electronic data processing equipment under that section 1 shall be retained for a period of not less than six years following the election at which the vote so recorded was cast.

5. R.S.19:31-24 is amended to read as follows:

**Lost, destroyed records; general registration provided.**

19:31-24. In the event of the loss or destruction of any or all of the original or duplicate permanent registration binders for any reason other than their elimination as permitted pursuant to sections 1 and 2, respectively, of P.L.1994, c.170 (C.19:31-10.1 and 19:31-3.3), or, in counties in which registration information has been filed and is stored by means of electronic data processing equipment in accordance with the provisions of that section 1 of P.L.1994, c.170, in the event of the loss or destruction of any or all of the original completed voter registration forms or any new or amended forms required under subsection c. of that section to be maintained in a permanent and separate file, the commissioner shall promptly provide for a general registration at the regular polling places in the district or districts for which the binders have been lost or destroyed.

6. R.S.19:31-26 is amended to read as follows:

**Card index file; notations, information.**

19:31-26. Unless voter registration information is filed and stored in electronic data processing equipment in accordance with the provisions of subsection a. of section 1 of P.L.1994, c.170 (C.19:31-10.1), the commissioner shall make and maintain a card index file showing on separate cards the full name, address, municipality, ward and district, registration number and date of registration of each person registered permanently in his county. This file shall be arranged alphabetically according to names irrespective of municipality, ward, district, registration number, and date of registration. Reasonably sufficient space shall be reserved on each card for the notations to be made thereon as herein provided.

The commissioner shall cause to be made notation on these cards as to each registrant respectively whose registration forms have been transferred from one register to another or to the inac-

tive, death or conviction files concurrently with such transfer. The card with such notations shall show the location of the registration forms of each registrant at all times. All changes of address of the registrant, including those within the same district, shall be noted on these cards concurrently with changes of address on the permanent registration forms.

7. This bill shall take effect immediately.

Approved December 20, 1994.

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#### CHAPTER 171

AN ACT concerning comity for certain applicants for license as professional engineers or land surveyors and amending P.L.1938, c.342.

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

1. Section 9 of P.L.1938, c.342 (C.45:8-35) is amended to read as follows:

**C.45:8-35 Applications for license, certificate of registration; fees; qualifications; evidence of qualifications; examination.**

9. Applications for license as professional engineers shall be on forms prescribed and furnished by the board, shall contain statements under oath, showing the applicant's education and detailed statement of his engineering experience, and shall contain not less than five references, of whom three or more shall be licensed professional engineers having personal knowledge of the applicant's engineering experience.

The application fee for professional engineers shall be set by the board and shall accompany the application.

Applications for license as land surveyors shall be on forms prescribed and furnished by the board, shall contain statements under oath, showing the applicant's education and detailed statement of his land surveying experience, and shall contain not less than five references, of whom three or more shall be licensed land surveyors having personal knowledge of the applicant's land surveying experience.

The application fee for land surveyors shall be set by the board and shall accompany the application.

Applications for a certificate of registration as "engineer-in-training" shall be on forms prescribed and furnished by the board, shall be accompanied by a fee set by the board and shall contain the names of three references of whom at least one shall be a professional engineer having personal knowledge of the applicant's engineering education, experience or training.

Applications for a certificate of registration as "surveyor-in-training" shall be on forms prescribed and furnished by the board, shall be accompanied by a fee set by the board and shall contain the names of three references of whom at least one shall be a licensed land surveyor having personal knowledge of the applicant's surveying education, experience or training.

All application fees shall be retained by the board.

The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for a license as a professional engineer, or as a land surveyor, or for certificate of registration as an engineer-in-training or a surveyor-in-training, to wit:

(1) As a professional engineer:

a. Graduation from a board approved curriculum in engineering of four years or more; a specific record of an additional four years or more of experience in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to be placed in responsible charge of such work; and successfully passing all parts of the written examination; or

b. Graduation from a board approved curriculum in engineering technology of four years or more; a specific record of an additional six years or more of experience in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to be placed in responsible charge of such work; and successfully passing all parts of the written examination; or

c. Graduation from a board approved curriculum in engineering or engineering technology of four years or more; a specific record of an additional 15 years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to be placed in responsible charge of such work; and successfully passing the specialized portion of the written examination which is designated as Part P; or

d. (Deleted by amendment, P.L.1989, c.276.)

e. A certificate of registration, issued by any state or territory or possession of the United States, or of any country, may, in the discretion of the board, be accepted as minimum evidence satis-

factory to the board that the applicant is qualified for registration as a professional engineer; provided that the minimum requirements for examination and license by the issuing agency in effect at the time of application to the issuing agency, which the applicant satisfied in order to qualify for examination by that issuing agency, are at least comparable to those same minimum requirements of the board which were in effect in this State at that time; and provided that the applicant has not failed any portion of a nationally administered, two-day examination, required by the board, that was taken in order to receive licensure by the issuing agency.

(2) As a land surveyor:

a. (i) Until December 31, 1990, successful completion of a board approved program in surveying in a school or college approved by the board as of satisfactory standing; an additional four years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to be placed in responsible charge of such work; and successfully passing a written examination; or

(ii) Effective January 1, 1991, graduation from a board approved curriculum in surveying of four years or more; an additional three years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to be placed in responsible charge of that work; and successfully passing all parts of the written examination; or

b. Until December 31, 1990, successfully passing a written examination in surveying prescribed by the board; and a specific record of six years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to be placed in responsible charge of such work; or

c. (Deleted by amendment, P.L.1977, c.340.)

d. A certificate of registration, issued by any state or territory or possession of the United States, or of any country, may, in the discretion of the board, be accepted as minimum evidence satisfactory to the board that the applicant is qualified for registration as a land surveyor; provided that the minimum requirements for examination and license by the issuing agency in effect at the time of application to the issuing agency, which the applicant satisfied in order to qualify for examination by that issuing agency, are at least comparable to those same minimum requirements of the board which were in effect in this State at that time; and provided that the issuing agency attests to the licensing criteria at the time of the applicant's original licensure in that jurisdiction, and the applicant receives a passing grade on the New Jersey specific portion of



the current land surveying examination and any portions of a nationally administered two-day examination required by the board not already passed by the applicant.

(3) As an engineer-in-training:

a. Graduation from a board approved curriculum in engineering or engineering technology of four years or more; and successfully passing the fundamentals portion of the written examination which is designated as Part F.

b. (Deleted by amendment, P.L.1989, c.276.)

(4) As a surveyor-in-training: Graduation from a board approved curriculum in land surveying of four years or more; and successfully passing the fundamentals portion of a board approved written examination.

Qualifications for professional engineers.

An applicant for license as a professional engineer shall be able to speak and write the English language. All applicants shall be of good character and reputation.

Completion of a master's degree in engineering shall be considered as equivalent to one year of engineering experience and completion of a doctor's degree in engineering shall be considered as equivalent to one additional year of engineering experience.

In considering the qualifications of applicants, engineering teaching experience may be considered as engineering experience for a credit not to exceed two years.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of construction of such work as a foreman or superintendent, or the observation of construction as an inspector or witness shall not be deemed to be experience in engineering work.

Any person having the necessary qualifications prescribed in this chapter to entitle him to a license shall be eligible for such license, although he may not be practicing his profession at the time of making the application.

A quorum of the examining board shall not be required for the purpose of passing upon the issuance of a license to any applicant; provided that no action on any application shall be taken without at least three votes in accord.

Engineering experience of a character satisfactory to the board shall be determined by the board's evaluation of the applicant's experience relative to the ability to design and supervise engineering projects and works so as to insure the safety of life, health and property.

The scope of the examination for professional engineering and methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering projects and works so as to insure the safety of life, health and property. An examination shall be given for the purpose of determining the qualifications of applicants for license in professional engineering. A candidate failing an examination may apply for reexamination to the extent permitted by regulations of the board. Subsequent examinations will require the payment of fees set by the board. The board shall schedule at least two examinations per year, with dates and places to be determined by the board.

Examinations of applicants for license as professional engineers will be divided into two parts, as follows:

**Part F--Fundamentals of Engineering--**This examination is intended to assess the applicant's competency in the fundamental engineering subjects and basic engineering sciences, such as mathematics, chemistry, physics, statistics, dynamics, materials science, mechanics of materials, structures, fluid mechanics, hydraulics, thermodynamics, electrical theory, and economics. A knowledge of P.L.1938, c.342 (C.45:8-27 et seq.) is also required.

**Part P--Specialized Training--**This examination is intended to assess the extent of the applicant's more advanced and specialized professional training and experience especially in his chosen field of engineering.

Applicants for certificates of registration as engineers-in-training shall qualify by satisfactorily passing the fundamentals portion of the written examination.

The scope, time and place of the examinations for applicants for certificates of registration as "engineers-in-training" shall be prescribed by the board. A candidate failing an examination may apply for reexamination to the extent permitted by the regulations of the board. Subsequent examinations will require the payment of fees set by the board.

**Qualifications for land surveyors.**

An applicant for license as a land surveyor shall be able to speak and write the English language. All applicants shall be of good character and reputation.

Completion of a master's degree in surveying shall be considered as equivalent to one year of surveying experience and completion of a doctor's degree in surveying shall be considered as equivalent to one additional year of surveying experience.

In considering the qualifications of applicants, survey teaching experience may be considered as surveying experience for a credit not to exceed two years.

In determining whether an applicant's experience is satisfactory for licensure, the board shall consider whether the applicant has demonstrated the ability to perform, manage and supervise field and office surveying activities and works so as to insure the safety of life, health and property.

An examination shall be given for the purpose of determining the qualifications of applicants for license in land surveying. The content of the examination for land surveying and methods of procedure shall be prescribed by the board with emphasis upon the applicant's ability to supervise land surveying projects and works. A candidate failing an examination may apply for reexamination to the extent permitted by regulations of the board. Subsequent examinations will require the payment of fees set by the board. The board shall schedule at least two examinations per year, with dates and places to be determined by the board.

Examinations of applicants for license as land surveyors shall be divided into two parts, as follows:

Part F--Fundamentals of Land Surveying--This examination is intended to assess the applicant's competency in the fundamental surveying subjects and basic surveying sciences, including, but not limited to, mathematics, chemistry, physics, statistics, dynamics, boundary law, real estate law, and economics. A knowledge of P.L.1938, c.342 (C.45:8-27 et seq.) is also required.

Part P--Specialized Training--This examination is intended to assess the extent of the applicant's more advanced and specialized professional training and experience in the field of land surveying.

Applicants for certificates of registration as surveyors-in-training shall qualify by satisfactorily passing the fundamentals portion of the written examination.

The scope, time and place of the examinations for applicants for certificates of registration as "surveyors-in-training" shall be prescribed by the board. A candidate failing an examination may apply for reexamination to the extent permitted by the regulations of the board. Subsequent examinations will require the payment of fees set by the board.

2. This act shall take effect immediately.

Approved December 20, 1994.

## CHAPTER 172

AN ACT concerning the use of school buses and supplementing chapter 39 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:39-22.1 School bus used to transport Developmental Disabilities client; permitted.**

1. The board of education of a school district may, pursuant to rules adopted by it, permit the use of school buses owned, leased or contracted by the school district for the purpose of transporting a handicapped adult who is a client of the Division of Developmental Disabilities in the Department of Human Services and who is continuing his education and training following graduation from secondary school. Transportation pursuant to this section will be limited to space availability on vehicles engaged in the transportation of school-age pupils along established routes. The board shall require that the individual transported, or his parent or guardian, pay all or part of any costs incurred by the district in providing the transportation, including but not limited to, the costs of fuel, driver salaries, insurance and depreciation.

2. This act shall take effect immediately.

Approved December 20, 1994.

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CHAPTER 173

AN ACT concerning the Delaware River Joint Toll Bridge Commission and amending R.S.32:8-2, R.S.32:8-3 and R.S.32:8-10, authorizing the Governor, on behalf of the State of New Jersey to enter into a supplemental compact or agreement with the Commonwealth of Pennsylvania amending the compact or agreement between the State of New Jersey and the Commonwealth of Pennsylvania entitled "Agreement between the State of New Jersey and the Commonwealth of Pennsylvania creating the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its powers and duties," as amended and supplemented, and authorizing the Governor to apply, on behalf of the State of

New Jersey, to the Congress of the United States for its consent to such supplemental compact or agreement.

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

1. The Governor is authorized to enter into a supplemental compact or agreement, on behalf of the State of New Jersey, with the Commonwealth of Pennsylvania amending Articles I, II, and IX of the compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey entitled "Agreement Between the State of New Jersey and the Commonwealth of Pennsylvania creating the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its powers and duties," as set forth in this 1993 amendatory act.

2. Article I of the "Agreement Between the State of New Jersey and the Commonwealth of Pennsylvania creating the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its power and duties," as amended and supplemented (R.S.32:8-1 et seq.), is amended to read as follows:

**Delaware River Joint Toll Bridge Commission.**

32:8-2. There is hereby created a body corporate and politic, to be known as the "Delaware River Joint Toll Bridge Commission" (hereinafter in this agreement called the "commission"), which shall consist of the commissioners, on behalf of the Commonwealth of Pennsylvania, provided for by the act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred forty-eight), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, and of commissioners, on behalf of the State of New Jersey, provided for by the act, approved the first day of April, one thousand nine hundred and twelve (Chapter two hundred ninety-seven), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, which said commissions have heretofore been acting as a joint commission by virtue of reciprocal legislation.

No action of the commission shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

In the event that any ex-officio member of the commission from Pennsylvania shall for any reason be absent from a meeting of the commission, a deputy or other person in his department designated by him for such purpose shall be authorized to act at such meeting for and in behalf of such absent member and to vote in his place on all matters which may be presented for consideration at such meeting. Such designation shall be signed by such ex-officio member and filed with the secretary of the commission and shall continue in effect until the expiration of the term of office of such member or until another designation shall be made.

In the event that any ex-officio member of the commission from New Jersey shall for any reason be absent from a meeting of the commission, a deputy or other person in the ex-officio member's department designated by the ex-officio member for such purpose shall be authorized to act at such meeting for and in behalf of such absent member and to vote in the member's place on all matters which may be presented for consideration at such meeting. Such designation shall be signed by the ex-officio member and filed with the secretary of the commission and shall continue in effect until the expiration of the term of office of such member or until another designation shall be made.

The commission shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:

(a) The administration, operation, and maintenance of the joint State-owned bridges across the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey, and located north of the present stone arch bridge of the Pennsylvania Railroad across the Delaware River from Morrisville to Trenton;

(b) The investigation of the necessity for additional bridge communications over the Delaware River, and the making of such studies, surveys and estimates as may be necessary to determine the feasibility and cost of such additional bridge communications;

(c) The preparation of plans and specifications for, and location, acquisition, construction, administration, operation and maintenance of, such additional bridge communications over the Delaware River, at any location north of the boundary line between Bucks county and Philadelphia county in the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, as the commission deems nec-

essary to advance the interests of the two States and to facilitate public travel; and the issuance of bonds and obligations to provide moneys sufficient for the acquisition or construction of such bridges; and the collection of tolls, rentals, and charges for the redemption of such bonds and obligations, and the payment of interest thereon;

(d) The procurement from the government of the United States of any consents which may be requisite to enable the commission to exercise any of its powers;

(e) The investigation of the necessity for additional port and terminal facilities within the area (hereinafter referred to as the "district") comprising all of the territory within the counties of Bucks, Northampton, Monroe and Pike in Pennsylvania, all of the territory within the counties of Sussex, Warren, Hunterdon and Mercer in New Jersey, and that part of the territory within the county of Burlington in New Jersey north of the northerly bank of Rancocas Creek as said creek and its north branch extend in a general easterly direction from the Delaware River and through Mount Holly, Pemberton and Browns Mills and other communities to the Burlington-Ocean County boundary line in New Jersey;

(f) The acquisition, construction, administration, operation and maintenance of such port and terminal facilities within the district as the commission may deem necessary to advance the interests of the two States; the issuance of bonds or other obligations of the commission to provide moneys sufficient for the acquisition or construction of such facilities; and the collection of fees, rentals, tolls and other charges for the payment of such bonds or obligations and the interest thereon, and for the administration, operation and maintenance of such facilities.

3. Article II of the agreement (R.S.32:8-3) is amended to read as follows:

**Powers of commission.**

32:8-3. For the effectuation of its authorized purposes, the commission is hereby granted the following powers as limited and supplemented by P.L.1994, c.176 (C.32:8-3.5 et seq.) and P.L.1994, c.177 (C.32:8-3.8 et seq.):

- (a) To have perpetual succession.
- (b) To sue and be sued.
- (c) To adopt and use an official seal.

(d) To elect a chairman, vice-chairman, secretary, and treasurer and appoint an engineer. The secretary, treasurer, and engineer need not be members of the commission.

(e) To adopt suitable by-laws for the management of its affairs.

(f) To appoint such other officers, agents and employees as it may require for the performance of its duties.

(g) To determine the qualifications and duties of its appointees, and to fix their compensation, except that the commission shall not employ directly or as an independent contractor a member of the commission for a period of two years after the expiration of the term of office of that member.

(h) To enter into contracts.

(i) To acquire, own, hire, use, operate, and dispose of personal property.

(j) To acquire, own, use, lease, operate, and dispose of real property and interest in real property, and to make improvements thereon.

(k) To grant the use of, by franchise, lease, and otherwise, and to make and collect charges for the use of, any property or facility owned or controlled by it.

(l) To borrow money upon its bonds or other obligations, either with or without security.

(m) To exercise the power of eminent domain.

(n) To determine the exact location, system, and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, maintain, operate or control.

(o) In addition to the foregoing powers, to exercise the powers, duties, authority and jurisdiction heretofore conferred and imposed upon the aforesaid commissions, hereby constituted a joint commission by reciprocal legislation of the Commonwealth of Pennsylvania and the State of New Jersey, with respect to the acquisition of toll bridges over the Delaware River, the management, operation and maintenance of such bridges, and the location, acquisition, construction, administration, operation and maintenance of additional bridge communications over the Delaware River at any location north of the boundary line between Bucks county and Philadelphia county in the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river. The powers granted in this paragraph shall be in addition to those powers granted by paragraph (a) of Article X of this agreement.

(p) To exercise all other powers, not inconsistent with the Constitutions of the States of Pennsylvania and New Jersey or of the



United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the powers granted to the commission by this agreement or any amendment thereof or supplement thereto, except the power to levy taxes or assessments for benefits; and generally to exercise, in connection with its property and affairs and in connection with property under its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

(q) To acquire, construct, rehabilitate, improve, maintain, lease as lessor or as lessee, repair and operate port and terminal facilities as hereinafter defined within the district, including the dredging of ship channels and turning basins and the filling and grading of land therefor.

(r) To provide from time to time for the issuance of its bonds or other obligations for any one or more of its corporate purposes; all bonds and other obligations hereafter issued by the commission shall have all the qualities and incidents of negotiable instruments.

(s) To fix, charge, and collect fees, rentals, tolls and other charges for the use of any of its port and terminal facilities so as to provide funds at least sufficient, with other funds available for such purposes (1) to pay the cost of maintaining, repairing and operating such port and terminal facilities, including the administrative expenses of the commission chargeable thereto, (2) to pay the bonds or other obligations issued on account of such facilities and the interest thereon as the same become due and payable, and (3) to provide reserves for such purposes, and to pledge such funds, over and above such costs of maintenance, repair and operation, to the payment of such bonds or other obligations and the interest thereon.

(t) To petition the Interstate Commerce Commission, any public service or public utilities commission, or any other Federal, State or local authority, whether administrative, judicial or legislative, for the adoption and execution of any physical improvement, change in method, rate of transportation, system of handling freight, warehousing, docking, lightering or transfer of freight, which, in the opinion of the commission, may be designed to improve or facilitate the movement or handling of commerce within the district or improve the terminal or transportation facilities therein.

As used in this agreement the term "port and terminal facilities" shall mean and shall include, without intending thereby to limit the definition of such term, any one or more of the following or any combination thereof:

(1) every kind of terminal or storage structure or facility now in use or hereafter designed for use in the handling, storage, loading or unloading of freight or passengers at steamship, railroad or motor terminals or airports, and every kind of transportation facility now in use or hereafter designed for use in connection therewith; and

(2) all real and personal property and all works, buildings, structures, equipment, machinery, appliances and appurtenances necessary or convenient for the proper construction, equipment, maintenance and operation of such facility or facilities or any one or more of them.

Notwithstanding any other provision of this agreement or any provision of law, State or Federal, to the contrary, the commission may combine for financing purposes any port and terminal facility or facilities constructed or acquired by it under the provisions of this agreement with any bridge or bridges heretofore or hereafter constructed or acquired by the commission, subject to any limitations contained in any trust indenture securing bonds of the commission at the time outstanding.

The powers herein granted to the commission with reference to port and terminal facilities shall supersede the right to exercise any such powers within the district, as defined in paragraph (e) of Article I of this agreement, by any other body which has been heretofore created by compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey.

Nothing contained in any other of the provisions of this compact or agreement shall be deemed or construed to amend, modify or repeal any of the powers, rights or duties conferred by, or limitations or restrictions expressed in, Article X of this compact or agreement, or any of the provisions of said Article X relating to a bridge to be constructed, operated and maintained by the Pennsylvania Turnpike Commission or the New Jersey Turnpike Authority, acting alone or in conjunction with each other.

Notwithstanding the above, each state reserves the right to provide by law for the exercise of a veto power by the Governor of that state over any action of any commissioner from that state at any time within 10 days (Saturdays, Sundays and public holidays in the particular state excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each state may provide by law for the manner of delivery of such minutes, and for notification of the action thereon.

4. Article IX of the agreement (R.S.32:8-10) is amended to read as follows:

**Annual reports, audits.**

32:8-10. The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports, from time to time, to the Governors and Legislatures as it may deem advisable.

The Auditor General of Pennsylvania and the State Auditor of New Jersey shall jointly conduct annual financial and management audits of expenditures and operations of the commission and shall submit a report of those audits to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey.

5. The Governor is authorized to apply, on behalf of the State of New Jersey, to the Congress of the United States for its consent and approval to such supplemental compact or agreement, but in the absence of such consent and approval, the commission referred to in such supplemental compact or agreement shall have all of the powers which the Commonwealth of Pennsylvania and the State of New Jersey may confer upon it without the consent and approval of Congress.

6. This act shall take effect immediately; but the Governor shall not enter into the supplemental compact or agreement hereinabove set forth on behalf of the State of New Jersey until passage by the Commonwealth of Pennsylvania of a substantially similar act embodying the supplemental compact or agreement between the two States.

Approved December 20, 1994.

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CHAPTER 174

AN ACT concerning gubernatorial veto over actions of the New Jersey commissioners to the Delaware River Joint Toll Bridge Commission and supplementing chapter 8 of Title 32 of the Revised Statutes and repealing P.L.1957,c.147.

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

**C.32:8-15.6 Minutes delivery; actions taking effect.**

1. a. The minutes of every meeting of the Delaware River Joint Toll Bridge Commission, established under R.S.32:8-1 et seq., shall, as soon as possible after the meeting, be delivered, by and under the certification of the secretary of the commission, to the Governor of the State of New Jersey, at the State House, in Trenton.

b. No action taken by a New Jersey commissioner at the meeting shall have force or effect for a period of 10 days, except Saturdays, Sundays and State public holidays, after the minutes have been delivered to the Governor under this section, unless the Governor approves the minutes, or any part thereof, in writing, by reciting the action approved, within this 10-day period. This veto power shall not be construed to affect the covenants contained in the bonds of the commission.

**C.32:8-15.7 Return of minutes.**

2. The Governor of New Jersey shall return the minutes to the Delaware River Joint Toll Bridge, not later than the 10-day period described in subsection b. of section 1 of this act, either with or without a veto of any action recited in the minutes to have been taken by a commissioner appointed from New Jersey. If the Governor does not return the minutes within this 10-day period, the action taken by the New Jersey commissioners shall have the force and effect as recited in the minutes, according to the wording thereof.

**C.32:8-15.8 Governor's veto of minutes.**

3. If the Governor of New Jersey, within the 10-day period described in subsection b. of section 1 of this act, returns the minutes to the Delaware River Joint Toll Bridge Commission with a veto against the action of a commissioner from New Jersey, the action of that commissioner shall be null and void and of no effect.

**Repealer.**

4. P.L.1957, c.147 (C.32:8-15.1 through 15.5, inclusive) is repealed.

5. This act shall take effect immediately, but shall remain inoperative until the enactment into law of P.L.1994, c.173, the enactment into law of legislation substantially similar to P.L.1994, c.173 by the Commonwealth of Pennsylvania, and the approval, by Congress, if necessary, of the supplemental compact or agreement provided for in P.L.1994, c.173.

Approved December 20, 1994.

## CHAPTER 175

AN ACT concerning the membership of the Delaware River Joint Toll Bridge Commission and amending R.S.32:9-1.

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

1. R.S.32:9-1 is amended to read as follows:

**Delaware River Joint Toll Bridge Commission, New Jersey membership; appointment, terms.**

32:9-1. The commission of the State of New Jersey, created by the act entitled "An act authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware river, and providing for free travel across the same," approved April 1, 1912 (L.1912, c.297, p.527), as amended and supplemented, is continued.

The commission shall consist of seven members as follows: the Commissioner of Transportation and the State Treasurer, who shall serve ex officio, and five public members none of whom shall serve concurrently in an elected state or federal office and who shall be appointed by the Governor with the advice and consent of the Senate for terms of three years. The terms of the public members shall terminate as follows:

- a. Two in 1938, and every 3 years thereafter.
- b. One in 1939, and every 3 years thereafter.
- c. Two in 1940, and every 3 years thereafter.

Notwithstanding the provisions of any other law, no member of the commission shall be deemed to have forfeited nor shall forfeit the member's office or employment or any benefits or emolument thereof by reason of the member's service as an ex officio member of the commission.

2. This act shall take effect upon the enactment into law by the Commonwealth of Pennsylvania of legislation adding two members from the Commonwealth of Pennsylvania to the commission, but if the Commonwealth of Pennsylvania has already enacted such legislation, this act shall take effect immediately.

Approved December 20, 1994.

## CHAPTER 176

AN ACT concerning employment policies of the Delaware River Joint Toll Bridge Commission and supplementing chapter 8 of Title 32 of the Revised Statutes.

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

**C.32:8-3.5 Findings, declarations.**

1. The Legislature finds and declares that:

a. The Delaware River Joint Toll Bridge Commission was created by this State and the Commonwealth of Pennsylvania, with the consent of Congress, to provide an efficient means of carrying out the planning, construction, maintenance and rehabilitation of certain Delaware River crossings.

b. The State and the Commonwealth rely upon the commission to competently execute the duties and powers delegated to it as well as to carefully manage the not inconsiderable financial means available to the commission.

c. Notwithstanding the delegation of power to the commission, it is incumbent upon the State of New Jersey and the Commonwealth of Pennsylvania to ensure that the commission executes its powers in a manner which ensures fairness to prospective employees. In addition, it is appropriate for the State of New Jersey and the Commonwealth of Pennsylvania to include certain fundamental governmental policies, such as equal employment opportunity, in the commission's enabling laws.

d. Therefore, it is in the best interest of the public to supplement or limit the powers of the commission, as the case may be, to ensure that commission employment practices are in accordance with the public policies of the State of New Jersey and the Commonwealth of Pennsylvania.

**C.32:8-3.6 Equal opportunity employment; awarding of contracts.**

2. a. The Delaware River Joint Toll Bridge Commission shall formulate and abide by an affirmative action program of equal opportunity whereby it will provide equal employment opportunity to members of minority groups qualified in all employment categories, including the handicapped, in accordance with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1) and the "Pennsylvania Human Relations Act," number 222 of the laws of Pennsylvania of 1955, except in the case of the

mentally handicapped, if it can be clearly shown that such handicap would prevent such person from performing a particular job.

b. Contracts and subcontracts to be awarded by the commission in connection with the construction, renovation or reconstruction of any structure or facility owned or used by the commission shall contain appropriate provisions by which contractors and subcontractors or their assignees agree to afford an equal employment opportunity to all prospective employees and to all actual employees to be employed by the contractor or subcontractor in accordance with an affirmative action program consonant with the provisions of the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1) and the "Pennsylvania Human Relations Act," number 222 of the laws of Pennsylvania of 1955.

**C.32:8-3.7 Hiring practice policy.**

3. The Delaware River Joint Toll Bridge Commission, in the exercise of its authority to appoint officers, agents and employees, shall adopt a policy of open and competitive hiring practices. The policy shall provide, at a minimum, that:

a. Job application forms shall be available at all commission facilities; and

b. All open positions shall be advertised in at least two newspapers published in New Jersey and two newspapers published in Pennsylvania.

4. This act shall take effect upon the enactment into law by the Commonwealth of Pennsylvania of legislation having an identical effect with this act, but if the Commonwealth of Pennsylvania has already enacted such legislation, this act shall take effect immediately, but this act shall remain inoperative until the enactment into law of P.L.1994, c.173, the enactment into law of legislation substantially similar to P.L.1994, c.173 by the Commonwealth of Pennsylvania, and the approval of Congress, if necessary, of the supplemental compact or agreement provided for in P.L.1994, c.173.

Approved December 20, 1994.

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CHAPTER 177

AN ACT concerning purchasing practices of the Delaware River Joint Toll Bridge Commission and supplementing chapter 8 of Title 32 of the Revised Statutes.

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

**C.32:8-3.8 Findings, declarations.**

1. The Legislature finds and declares that:

a. The Delaware River Joint Toll Bridge Commission was created by this State and the Commonwealth of Pennsylvania, with the consent of Congress, to provide an efficient means of carrying out the planning, construction, maintenance and rehabilitation of certain Delaware River crossings.

b. The State and the Commonwealth rely upon the commission to competently execute the duties and powers delegated to it as well as carefully managing the not inconsiderable financial means available to the commission.

c. Notwithstanding the delegation of power to the commission, it is incumbent upon the State of New Jersey and the Commonwealth of Pennsylvania to ensure that the commission carries out its duties in a manner which ensures prudent use of toll payer monies.

d. Therefore, it is in the best interest of the public to supplement or limit the powers of the commission, as the case may be, to require the commission to competitively bid contracts in accordance with the public policies of the State of New Jersey and the Commonwealth of Pennsylvania.

**C.32:8-3.9 Operating rules, procedures; competitive purchasing.**

2. a. The Delaware River Joint Toll Bridge Commission, in the exercise of its authority to make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, shall adopt standing operating rules and procedures requiring that, except as hereinafter provided, no contract on behalf of the commission shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds \$10,000 unless the commission shall first publicly advertise for bids therefor, and requiring that the commission award the contract to the lowest responsible bidder; provided, however, that such advertising shall not be required where the contract to be entered into is one for the furnishing or performing services of a professional nature or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utility Commissioners of the Commonwealth of Pennsylvania or the Board of Public Utilities of this State and tariffs and schedules of the charges, made, charged, or exacted by the



public utility for any such products to be supplied or services to be rendered are filed with the appropriate boards.

This subsection shall not prevent the commission from having any work done by its own employees, nor shall it apply to repairs, or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience require, or the exigency of the commission's service will not admit of such advertisement. In such case the commission shall, by resolution, passed by the affirmative vote of a majority of its members, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be so expended.

b. The commission may annually adjust the threshold amount in direct proportion to the rise or fall of 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.

3. This act shall take effect upon the enactment into law by the Commonwealth of Pennsylvania of legislation having an identical effect with this act, but if the Commonwealth of Pennsylvania has already enacted such legislation, this act shall take effect immediately, but this act shall remain inoperative until enactment of P.L.1994, c.173, the enactment into law of legislation substantially similar to P.L.1994, c.173 by the Commonwealth of Pennsylvania, and the approval of Congress, if necessary, of the supplemental compact or agreement provided for in P.L.1994, c.173.

Approved December 20, 1994.

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## CHAPTER 178

AN ACT concerning the Delaware River Joint Toll Bridge Commission and directing the commission to provide for its meetings to be open to the public and the news media.

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

**C.32:8-24 Findings, declarations.**

1. a. The Legislature hereby finds that the public's awareness of and participation in governmental actions is essential to maintaining a free society; that the more open a government is with its citizens, the greater the understanding and participation of the

public in government; that the public's fundamental right to know the process of governmental decision-making and to review the reasons for those decisions is thwarted when the public's access to governmental meetings is blocked; and that government and the agencies created thereby must insure that their actions remain fully accountable to the public.

b. The Legislature declares that for these public policy reasons the Delaware River Joint Toll Bridge Commission shall develop rules and regulations concerning the right of the public and members of the news media to be present at meetings of the commission as herein provided.

**C.32:8-25 Definitions.**

2. As used in this act:

"Board" means the Board of Commissioners of the Delaware River Joint Toll Bridge Commission;

"Commission" means the Delaware River Joint Toll Bridge Commission;

"Meeting" means any gathering, whether corporeal or by means of communications equipment, which is attended by, or open to, the board, held with the intent, on the part of the board members present, to discuss or act as a unit upon the specific public business of the commission. "Meeting" does not mean a gathering: (1) attended by less than an effective majority of the commissioners; or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering;

"News media" means major wire services, television news services, radio news services and newspapers, whether located in this State or in any other state, and personnel representing any such service.

"Public business" means matters which relate in any way, directly or indirectly, to the performance of the functions of the Delaware River Joint Toll Bridge Commission or the conduct of its business.

**C.32:8-26 Public meetings; notice.**

3. a. Notwithstanding any inconsistent provisions of any general or special law, all meetings of the commission are declared to be public meetings and shall be open to the public and members of the news media, individually and collectively, for the purpose of observing the full details of all phases of the deliberation, policy-making and decision-making of the board to the extent that meetings and deliberations are open to the public under the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.) and the "Sunshine Act," number 84 of the laws of Pennsylvania of 1986.

b. The board shall adopt, within six months of the effective date of this act, appropriate rules and regulations concerning proper notice to the public and the news media of its meetings and the right of the public and the news media to be present at its meetings. The rules and regulations adopted pursuant to this section shall provide for the same notice and right of the public and news media to be present as well as any other rights and duties provided in the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.) and the "Sunshine Act," number 84 of the laws of Pennsylvania of 1986. To the extent that these laws conflict, the commission shall incorporate into the rules and regulations the provisions of that law which provides for the greatest rights to the public and the news media.

**C.32:8-27 Minutes; public meeting information officer, appointed.**

4. a. It shall be the duty of the board to insure that true and accurate minutes are kept of board meetings and that such minutes are promptly made available to the members of the public and the news media.

b. The board shall appoint a public meeting information officer who shall be responsible for responding to requests from the public and the news media for information concerning the scheduling, attendance and minutes of board meetings.

**C.32:8-28 Rules, regulations in minutes.**

5. Any rules or regulations adopted pursuant to section 3 of this act shall become a part of the minutes of the commission and shall be subject to the approval of the Governor of New Jersey and the Governor of Pennsylvania if the approval of the minutes shall be provided for by the law of either state.

**C.32:8-29 Appeals.**

6. Any person denied any right granted by sections 3 or 4 of this act may appeal the denial to the Superior Court of New Jersey, the Court of Common Pleas of the Commonwealth of Pennsylvania, or any court of competent jurisdiction within one year of the date that the cause of action arises.

**C.32:8-30 Violations; removal from office.**

7. Any official or employee of the commission who willfully engages in a continuous and repetitive pattern of violating the provisions of this act shall be subject to removal from office or employment.

8. This act shall take effect upon the enactment into law by the Commonwealth of Pennsylvania of legislation having an identical effect with this act, but if the Commonwealth of

Pennsylvania has already enacted such legislation, this act shall take effect immediately.

Approved December 20, 1994.

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#### CHAPTER 179

AN ACT concerning restoration and expansion of passenger rail service.

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

1. The Legislature finds and determines that:

a. To help achieve federal Clean Air Act standards for ozone and carbon monoxide, the State must reduce pollution emissions from gasoline powered vehicles.

b. As a means of reducing such emissions, the State has established an Employer Trip Reduction Program which requires employers that have work sites with 100 or more workers per work location to increase the average passenger occupancy at the work location by not less than 25 percent over the average vehicle occupancy rate for the area.

c. Failing to meet federal air quality standards would jeopardize continued receipt of federal highway matching funds provided pursuant to the federal Intermodal Surface Transportation Efficiency Act of 1991.

d. To further assist State efforts in reducing air pollution levels and continued reliance on automobiles for business and pleasure driving, it is incumbent on the State to take greater initiative in providing imaginative leadership through the restoration and promotion of viable public transportation services, which may include additional rail passenger or autobus services.

e. Such emphasis on public transportation is also noted in the federal Intermodal Surface Transportation Efficiency Act of 1991 which identifies and authorizes funding for several rail corridors within the State for further study and development.

2. a. The New Jersey Transit Corporation in conjunction with the Department of Transportation shall prepare an inventory of abandoned rail lines and rail lines currently used solely for freight services.

b. Upon completion of the required rail line inventory, the corporation in conjunction with the department shall assess the merits of restoring or adding rail passenger service to abandoned or to rail freight service lines. In making such assessment, the following criteria, among others, shall be considered: (1) the impact of connecting major urban areas with rail passenger service, (2) the capital and operating costs for each new rail passenger line service, (3) the estimated number of passengers that would use the new rail service, (4) the reduction in the amount of pollution emissions that would occur by reducing vehicular travel in favor of travel on new passenger rail line services, (5) the impact on existing bus services, (6) the impact on existing rail freight services, and (7) a comparison of the costs and benefits of other non-rail transportation proposals that could provide vehicle emission reduction benefits similar to those anticipated from greater use of new rail services.

c. The corporation shall submit a priority list of rail passenger line services, including potential light rail operations, that are recommended for restoration or initiation to the Governor and to the Chairman of the Senate Transportation Committee and the Chairman of the Assembly Transportation and Communications Committee within nine months of the effective date of this act.

3. This act shall take effect immediately.

Approved December 20, 1994.

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## CHAPTER 180

AN ACT concerning the New Jersey Life and Health Insurance Guaranty Association and amending P.L.1991, c.208.

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

1. Section 8 of P.L.1991, c.208 (C.17B:32A-8) is amended to read as follows:

**C.17B:32A-8 Member insurers assessed to provide funding for association.**

8. a. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary.

Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money, on and after the due date.

b. There shall be two classes of assessments, as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs of the association which are not objected to by the commissioner and other expenses and examinations conducted under the authority of subsection e. of section 11 of this act. Class A assessments shall also be made, upon the request of the commissioner, for the purpose of meeting costs incurred by or on behalf of the department in the administration of an insolvent insurer to the extent those costs exceed assets of the insolvent insurer available for that purpose. Class A assessments need not be related to a particular impaired or insolvent insurer. The amount of any Class A assessment shall be determined by the board.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 7 of this act with respect to an impaired or an insolvent insurer. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

c. (1) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this State by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this State for such calendar years by all assessed member insurers.

(2) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall be made as necessary to implement the purposes of this act. Classification of assessments under subsection b. of this section and computation of assessments under this subsection c. shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

d. The association shall exempt, abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the

commissioner, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations or places the member insurer in an unsafe or unsound financial condition. In the event an assessment against a member insurer is exempted, abated or deferred, in whole or in part, the amount by which that assessment is exempted, abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

e. (1) The total of all assessments imposed under subsection b. of this section upon a member insurer for the life insurance and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent and for the health insurance account shall not in any one calendar year exceed two percent of that insurer's average premiums, as reported in the annual statement in a form prescribed by the commissioner, received in this State on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

(2) If a one percent assessment for any subaccount of the life insurance and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to paragraph (1) of subsection c. of this section, the board shall assess all subaccounts of the life insurance and annuity account for the necessary additional amount, subject to the maximum stated in paragraph (1) of this subsection.

(3) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

f. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of an account exceed the amount the board, with the concurrence of the commissioner, finds is necessary to carry out the obligations of the association with respect to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount

may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

g. Except for that portion of assessments which may be offset against premium taxes pursuant to section 18 of this act, it shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this act, to consider the amount reasonably necessary to meet its assessment obligations under this act.

h. The association shall issue to each insurer paying an assessment pursuant to this act, other than a Class A assessment, a certificate of contribution, in a form and manner prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amount or date of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and manner and for such amount and period of time as the commissioner may approve.

2. This act shall take effect immediately and shall be retroactive to January 1, 1991.

Approved December 20, 1994.

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#### CHAPTER 181

AN ACT concerning notice requirements for annual fire district elections and amending N.J.S.40A:14-72.

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

1. N.J.S.40A:14-72 is amended to read as follows:

**Annual fire district elections.**

40A:14-72. An election shall be held annually on the third Saturday in February in each established fire district for the election of members of the board according to the expiration of terms. The initial election for a newly created fire district may take place on another date as a governing body may specify under N.J.S.40A:14-70, but the annual election thereafter shall be held on the third Saturday in February. The place of the election shall be determined by the board and a notice thereof, and of the clos-



ing date for the filing with the clerk of the board of petitions of nomination for membership on the board, shall be published at least once in a newspaper circulating in the district, at least six weeks prior to the date fixed for the election. Fire districts located in the same municipality may combine the publication of their notices of election. For the purpose of this section, "notices of election" shall include the notices required to be published under section 7 of P.L.1953, c.211 (C.19:57-7).

The legal voters thereat shall determine the amount of money to be raised for the ensuing year and determine such other matters as may be required.

2. This act shall take effect immediately.

Approved December 20, 1994.

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## CHAPTER 182

AN ACT concerning voter registration and revising and supplementing various parts of the statutory law.

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

1. R.S.19:31-1 is amended to read as follows:

**Registration required to vote.**

19:31-1. No person shall be permitted to vote at any election unless such person shall have been registered in the manner hereinafter in this chapter provided.

2. R.S.19:31-2 is amended to read as follows:

**Commissioner of registration.**

19:31-2. In all counties having a superintendent of elections, the superintendent of elections is hereby constituted the commissioner of registration and in all other counties the secretary of the county board is hereby constituted the commissioner of registration.

The commissioner of registration shall have complete charge of the registration of all eligible voters within their respective counties.

The commissioner of registration shall have power to appoint temporarily, and the commissioner of registration in counties of

the first class having more than 800,000 inhabitants shall have power to appoint on a permanent, or temporary basis, such number of persons, as in the commissioner's judgment may be necessary in order to carry out the provisions of this Title. All persons appointed by the commissioner of registration in counties of the first class having more than 850,000 inhabitants according to the latest federal decennial census to serve for terms of more than six months in any one year shall be in the career service of the civil service and shall be appointed, and hold their positions, in accordance with the provisions of Title 11A, Civil Service. All persons appointed by the commissioner of registration in counties of the first class having more than 600,000 but less than 850,000 inhabitants according to the latest federal decennial census to serve for terms of more than six months in any one year, other than the chief deputy and chief clerk and confidential secretary and chief custodian, shall be in the career service of the civil service and shall be appointed and hold their positions, in accordance with the provisions of Title 11A, Civil Service. Persons appointed by the commissioner of registration in such counties to serve for terms of six months or less in any one year and persons appointed by the commissioner of registration shall not be subject to any of the provisions of Title 11A, Civil Service, but shall be in the unclassified service.

In each county the commissioner of registration shall submit to the Secretary of State on or before February 15 of each year a plan providing for evening registration for the primary election and on or before July 1 plans providing for evening registration for the general election, which plans shall be subject to approval by the Secretary of State. Evening registration shall be made available in the office of each commissioner of registration between the hours of 4 p.m. and 9 p.m. on the 29th day preceding the primary and general elections and, in any year in which municipal elections are to be held in any municipality within the county, on the 29th day preceding those municipal elections.

In each county, the commissioner of registration may also establish a plan for out-of-office registration, including door-to-door registration.

Nothing in this section shall preclude the commissioner from providing pursuant to plan evening registration in excess of the requirements of this section, or shall preclude or in any way limit out-of-office registration conducted by persons or groups other than the commissioner.

The commissioner of registration shall provide such printed forms, blanks, supplies and office telephone and transportation equipment and shall prescribe such reasonable rules and regulations not inconsistent with those of the Secretary of State as are necessary in the opinion of the commissioner to carry out the provisions of this Title and any amendments or supplements thereto.

Subject to the limitations set forth in chapter 32 of this Title, all necessary expenses incurred, as and when certified and approved by the commissioner of registration shall be paid by the county treasurer of the county.

Nothing in the provisions of subtitle 2 of the Title, Municipalities and Counties (R.S.40:16-1 et seq.), shall in anywise be construed to affect, restrict or abridge the powers herein conferred on the commissioners of registration of the several counties.

All powers granted to the commissioner in all counties not having superintendents of elections by the provisions of this Title are hereby conferred on the county board in such counties and any and all duties conferred upon the commissioner in all counties not having a superintendent of elections by the provisions of this Title shall only be exercised and performed by such commissioner under the instructions and directions of and subject to the approval of the county board of such counties.

3. R.S.19:31-3 is amended to read as follows:

**Registration forms, original and duplicate; contents.**

19:31-3. a. The commissioner of registration in each county shall maintain one original and one duplicate registration form for the registration of each duly registered voter in the county. Such forms shall consist of an equal number of original forms of one color and duplicate forms of another color. Each set of original and duplicate registration forms shall be serially numbered and each of such forms shall be suitable for locking in a looseleaf binder, shall be approximately 10 inches by 16 inches so as to contain on the face thereof a margin of approximately 2 inches for binding, and shall contain the information hereinafter required.

b. Space shall be provided on both the original and duplicate forms at the top for the word "original" on the original forms and the word "duplicate" on the duplicate forms, to be followed immediately below by the word "registration" on both forms.

Immediately to the left of the registration and identification statement shall be printed a column approximately 2 1/2 inches

wide for subsequent changes in address or removals of such applicant from one district to another.

Immediately to the right of the registration and identification statement shall be printed a form for recording the fact that the registered voters have voted. The face of the record of voting form shall be ruled to provide for serial number, the words "original voting record" on the original record of voting form and the words "duplicate voting record" on the duplicate record of voting forms, followed by the name, address and the municipality, ward and district of the registrant at the top of the space. The remainder of the space shall be ruled to provide a record for a period of 20 years of the number of the ballot cast by the registrant at the primary election for the general election, the general election and other elections and also the first three letters of the name of the political party whose ballot such registrant cast at the primary election for the general election.

c. The original and duplicate registration and voting forms shall be in the form the Secretary of State prescribes pursuant to section 16 of P.L.1974, c.30 (C.19:31-6.4).

4. R.S.19:31-5 is amended to read as follows:

**Persons entitled to register; failure to vote no grounds for removal.**

19:31-5. Each person, who at the time he applies for registration resides in the district in which he expects to vote, who will be of the age of 18 years or more at the next ensuing election, who is a citizen of the United States, and who, if he continues to reside in the district until the next election, will at the time have fulfilled all the requirements as to length of residence to qualify him as a legal voter, shall, unless otherwise disqualified, be entitled to be registered in such district; and when once registered shall not be required to register again in such district as long as he resides therein, except when required to do so by the commissioner, because of the loss of or some defect in his registration record.

The registrant, when registered as provided in this Title, shall be eligible to vote at any election to be held subsequent to such registration, if he shall be a citizen of the United States of the age of 18 years and shall have been a resident of the State for at least 30 days and of the county at least 30 days, when the same is held, subject to any change in his qualifications which may later disqualify him. No registrant shall lose the right to vote, and no registrant's name shall be removed from the registry list of the

county in which the person is registered, solely on grounds of the person's failure to vote in one or more elections.

5. R.S.19:31-6 is amended to read as follows:

**Registration; places, time, requirements.**

19:31-6. Any person qualified to vote in an election shall be entitled to vote in the election if the person shall have registered to vote on or before the 29th day preceding the election by:

a. registering in person at any offices designated by the commissioner of registration for providing and receiving registration forms;

b. completing a voter registration form while applying for a motor vehicle driver's license from an agent of the Division of Motor Vehicles, as provided for in section 24 of P.L.1994, c.182 (C.39:2-3.2);

c. completing and returning to the Secretary of State or having returned thereto a voter registration form received from a voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c.182 (C.19:31-6.11), while applying for services or assistance or seeking a recertification, renewal or change of address at an office of that agency;

d. completing and returning to the Secretary of State a voter registration form obtained from a public agency, as defined in subsection a. of section 15 of P.L.1974, c.30 (C.19:31-6.3);

e. completing and returning to the Secretary of State or having returned thereto a voter registration form received from a door-to-door canvass or mobile registration drive, as provided for in section 19 of P.L.1974, c.30 (C.19:31-6.7);

f. completing and returning to the Secretary of State a federal mail voter registration form, as prescribed in subsection (b) of section 9 of the "National Voter Registration Act of 1993," (42 U.S.C. § 1973gg et seq.); or

g. completing and returning to the Secretary of State or the appropriate county clerk an application for a federal postcard application form to register to vote, as provided for in the "Overseas Absentee Voting Act" (42 U.S.C. § 1973ff-1 et seq.) and section 4 of P.L.1976, c.23 (C.19:59-4).

When the commissioner has designated a place or places other than his office for receiving registrations, the commissioner shall cause to be published a notice in a newspaper circulated in the municipality wherein such place or places of registration shall be located. Such notice shall be published pursuant to R.S.19:12-7.

Any office designated by the commissioner of registration for receiving registration forms shall have displayed, in a conspicuous location, registration and voting instructions. These instructions shall be the same as those provided for polling places under R.S.19:9-2 and shall be provided by the commissioner.

6. Section 15 of P.L.1974, c.30 (C.19:31-6.3) is amended to read as follows:

**C.19:31-6.3 Public agency defined; registration card.**

15. a. As used in this section, "public agency" shall mean:

The Division of Worker's Compensation, the Division of Employment Services and the Division of Unemployment and Temporary Disability Insurance, established initially by section 5 of P.L.1948, c.446 (C.34:1A-5), in the Department of Labor;

The Division of Taxation in the Department of the Treasury, continued under section 24 of P.L.1948, c.92 (C.52:18A-24);

The New Jersey Transit Corporation, established pursuant to section 4 of P.L.1979, c.150 (C.27:25-4);

Any free county library established under the provisions of article 1 of chapter 33 of Title 40 of the Revised Statutes;

Any regional library established under the provisions of P.L.1962, c.134 (C.40:33-13.3 et seq.);

Any free public library established under the provisions of article 1 of chapter 54 of Title 40 of the Revised Statutes;

Any joint free public library established under the provisions of P.L.1959, c.155 (C.40:54-29.3 et seq.);

Any office or commercial establishment where State licenses or permits, other than licenses or permits issued by a professional or occupational board established under the laws of this State, are available to individual members of the public; and

Any recruitment office of the New Jersey National Guard.

b. Any person entitled to register to vote may register as a voter in the election district in which that person resides at any time prior to the twenty-ninth day preceding any election by completing a registration form described in section 16 of P.L.1974, c.30 (C.19:31-6.4) and submitting the form to the commissioner of registration of the county wherein the person resides or alternatively, in the case of a registration form provided by the employees or agents of a public agency or a voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c.182 (C.19:31-6.11), to those employees or agents or to the Sec-

retary of State. Any registration form addressed to a commissioner of registration may be mailed to or delivered to the office of that commissioner, and in the case of a registration form available at a public agency, the form shall be mailed to the Secretary of State, or delivered to the commissioner of registration in the county of the registrant. A registration form postmarked, stamped or otherwise marked as having been received from the registration applicant, on or before the twenty-ninth day preceding any election shall be deemed timely.

7. Section 16 of P.L.1974, c.30 (C.19:31-6.4) is amended to read as follows:

**C.19:31-6.4 Registration forms, contents, availability; duties of officials.**

16. a. The Secretary of State shall cause to be prepared and shall provide to each county commissioner of registration registration forms of size and weight suitable for mailing, which shall require the information required by R.S.19:31-3 in substantially the following form:

**VOTER REGISTRATION APPLICATION**

Print clearly in ink. Use ballpoint pen or marker.

(1) This form is being used as (check one):

☐ New registration

☐ Address change

☐ Name change

(2) Name:.....

                    Last                    First                    Middle

(3) Street Address where you live:

.....

                    Street Address                                    Apt. No.

.....

(4) City or Town                    County                    Zip Code

(5) Address Where You Receive Your Mail (if different from above):

.....

(6) Date of Birth: .....

                    Month                    Day                    Year

(7) Telephone Number (optional) .....

(8) Name and address of Your Last Voter Registration

.....

.....

.....

(9) Declaration - I swear or affirm that:

I am a U.S. citizen

I live at the above address

I will be at least 18 years old on or before the day of the next election

I am not on parole, probation or serving sentence due to a conviction for an indictable offense under any federal or State laws

I UNDERSTAND THAT ANY FALSE OR FRAUDULENT REGISTRATION MAY SUBJECT ME TO A FINE OF UP TO \$1,000.00, IMPRISONMENT UP TO FIVE YEARS, OR BOTH PURSUANT TO R.S.19:34-1.

.....  
Signature or mark of the registrant

Date

(10) If applicant is unable to complete this form, print name and address of individual who completed this form.

.....  
Name

.....  
Address

In addition, the form may include notice to the applicant of information and options relating to the registration and voting process, including but not limited to notice of qualifications required of a registered voter; notice of the final day by which a person must be registered to be eligible to vote in an election; a place at which the applicant may indicate availability for service as a member of the district board of elections; and a place at which the applicant may indicate a desire to receive information concerning absentee voting.

b. The reverse side of the registration form shall bear the address of the Secretary of State or the commissioner of registration to whom such form is supplied, and a United States postal permit the charges upon which shall be paid by the State.

c. The Secretary of State shall cause to be prepared registration forms of the size, weight and form described in subsection a. of this section in both the English and Spanish language and shall provide such forms to each commissioner of registration of any county in which there is at least one election district in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

d. The commissioner of registration shall furnish such registration forms upon request in person to any person or organization in such reasonable quantities as such person or organization shall



request. The commissioner shall furnish no fewer than two such forms to any person upon request by mail or by telephone.

e. Each such registration form shall have annexed thereto instructions specifying the manner and method of registration and stating the qualifications for an eligible voter.

f. The Secretary of State shall also furnish such registration forms and such instructions to the Director of the Division of Worker's Compensation, the Director of the Division of Employment Services, and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor; to the Director of the Division of Taxation in the Department of the Treasury; to the Executive Director of the New Jersey Transit Corporation; to the appropriate administrative officer of any other public agency, as defined by subsection a. of section 15 of P.L.1974, c.30 (C.19:31-6.3); to the Adjutant General of the Department of Military and Veterans' Affairs; and to the chief administrative officer of any voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c.182 (C.19:31-6.11).

g. All registration forms received by the Secretary of State in the mail or forwarded to the Secretary of State shall be forwarded to the commissioner of registration in the county of the registrant.

h. An application to register to vote received from the Division of Motor Vehicles or a voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c.182 (C.19:31-6.11), shall be deemed to have been timely made for the purpose of qualifying an eligible applicant as registered to vote in an election if the date on which the division or agency shall have received that document in completed form, as indicated in the lower right hand corner of the form, was not later than the 29th day preceding that election.

8. Section 17 of P.L.1974, c.30 (C.19:31-6.5) is amended to read as follows:

**C.19:31-6.5 Acceptance of registration.**

17. a. Upon receipt of any completed registration form, the commissioner of registration shall review it, and if it is found to be in order, shall:

(1) Send to the registrant written notification that such registrant is duly registered to vote. No registrant shall be considered a registered voter until the commissioner of registration reviews the application submitted by the registrant and deems it accept-

able. On the face of such notification in the upper left-hand corner shall be printed the words: "Do Not Forward. Return Postage Guaranteed. If not delivered in 2 days, return to the Commissioner of Registration."

(2) Paste, tape, or photocopy the completed registration form onto an original registration form, and shall paste or tape a copy of such completed registration form onto a duplicate registration form, both of which shall be filed as provided in R.S.19:31-10. Nothing in this paragraph shall preclude any commissioner of registration from keeping the original mail registration form on file.

(3) In the case of a registrant currently registered in another county of this State, notify the commissioner of registration of such other county to delete such registrant's name from the list of persons registered in such other county.

b. The commissioner shall notify a registrant of the reasons for any refusal to approve his registration.

c. (Deleted by amendment, P.L.1994, c.182.)

9. Section 19 of P.L.1974, c.30 (C.19:31-6.7) is amended to read as follows:

**C.19:31-6.7 Presidential election; door-to-door canvassing.**

19. a. On December 31 of every year in which a Presidential Election has been held, each county may certify to the Secretary of State the number of newly registered voters who have been registered by door-to-door canvassing and registration, if any, during that calendar year. The funds provided pursuant to subsection c. of this section shall be allocated by the Secretary of State to each county wherein such canvassing and registration has been conducted in the same proportion as the number of voters newly registered by door-to-door canvassing in each such county is to the total number of voters newly registered by door-to-door canvassing in all such counties throughout the State.

b. Plans for any door-to-door canvassing and registration may be included in the plan, if any, for mobile registration for the general election submitted pursuant to R.S.19:31-2.

c. (Deleted by amendment, P.L.1994, c.182.)

10. R.S.19:31-10 is amended to read as follows:

**Filing of registration forms.**

19:31-10. The original and duplicate registration forms when filled out shall be filed alphabetically by districts at the office of

the commissioner in separate sets of locked binders, one for the permanent office record and the other for use in the polling places on election days. Each set of the locked binders of original and duplicate registration forms shall consist of two volumes for each election district to be known as volume I and volume II. Volume I shall contain an index alphabetically arranged beginning with the letter "A" and ending with the letter "K", and volume II shall contain a similar index beginning with the letter "L" and ending with the letter "Z". In filing the forms there shall be inserted after the original and duplicate registration forms of each registrant a record of voting form with the corresponding serial number and the name and address of the registrant thereon. The binders containing the duplicate registration forms and the corresponding record of voting forms shall constitute and be known as the signature copy registers.

The original registration forms shall not be open to public inspection except during such period as the duplicate registration forms are in process of delivery to or from the district boards or in the possession of such district boards. The original registration forms shall not be removed from the office of the commissioner except upon the order of a court of competent jurisdiction. The signature copy registers shall at all times, except during the time as above provided and subject to reasonable rules and regulations be open to public inspection.

11. R.S.19:31-11 is amended to read as follows:

**Change of residence notice.**

19:31-11. a. In all counties within the State, change of residence notices shall be made by a written request, signed by the registrant, forwarded to the commissioner by mail, and actually received by the commissioner, or by calling in person at the office of the commissioner or the municipal clerk. The commissioner shall provide change of residence notices in card form for the use of any registered voter moving to another address within the same election district or to another election district within the same county. Copies of these notices shall also be available at the office of the municipal clerk in each municipality. Each municipal clerk shall transmit daily to the commissioner all the filled out change of residence notices that may be in the municipal clerk's office at the time. These notices shall be printed upon cards, shall contain a blank form showing where the applicant last resided and the address and exact location to which the applicant has moved and

shall have a line for the applicant's signature. Upon receipt of such change of residence notice the commissioner shall cause the signature to be compared with the registration forms of the applicant and, if such signature appears to be of and by one and the same legal voter, the commissioner shall cause the entry of the change of residence to be made on those registration forms and the registrant shall thereupon be qualified to vote in the election district to which the registrant shall have so moved. If the commissioner is not satisfied as to the signature on the request for a change of residence, a confirmation notice as prescribed by subsection d. of R.S.19:31-15 shall be sent by mail with postage prepaid to the registrant at the new address.

The application for change of residence shall be filed with the commissioner or municipal clerk, as the case may be, on or before the twenty-ninth day preceding any election. All applications for change of residence postmarked on or before the twenty-ninth day preceding any election shall be deemed timely.

b. In any county any voter who, prior to an election, shall move within the same county after the time above prescribed for filing an application for change of residence without having made application for change of residence, or who has not returned a confirmation notice sent to the voter by the commissioner of registration of the county or has otherwise failed to notify the commissioner of registration of the voter's change of address within the county, shall be permitted to vote in that election in the district to which the voter has moved, upon signing an affidavit, which shall set forth (1) the date upon which the voter moved, (2) the address from which the voter moved, and (3) the address to which the voter moved, and submitting that affidavit, completed and signed, to the municipal clerk of the municipality in which the voter resides, and such affidavit shall constitute a transfer to the said new residence for any subsequent election. The municipal clerk shall, immediately following the election, transmit each such affidavit so submitted to the commissioner of registration for the county in which the district is located, and the commissioner shall correct the voter's address in the registry list of the county. The county clerk shall furnish to the municipal clerks form affidavits for this purpose and the municipal clerks shall turn over all signed affidavits to the commissioner; provided, however, if the voter has moved from one residence to another within the same election district at any time, the voter shall be permitted to vote in such election district at any election upon

written affirmation by the registrant to the municipal clerk of the registrant's change of address.

c. A voter who moves from an election district in one county to an election district in another county shall register in the new county of residence, in accordance with the provisions of R.S.19:31-6, in order to be permitted to vote.

12. R.S.19:31-13 is amended to read as follows:

**Change in registration due to name change.**

19:31-13. Whenever the registrant after his or her original registration shall change his or her name due to marriage, divorce, or by judgment of court, the registrant shall in person or by mail submit to the commissioner of registration a written statement notifying the commissioner of the change, which statement shall take such form, and be printed on a postal card suitable for mailing of such design, as the Secretary of State shall prescribe and shall be signed by the registrant. The commissioner, upon receipt of such a notice of change of name, shall revise accordingly the name of the registrant as it appears among the items of information concerning the registrant included on the registrant's registration forms, shall make a photographic copy of the notice of name change submitted by the registrant, and shall affix the original notice so submitted to the registrant's original registration form and the photographic copy of that notice to the registrant's duplicate registration record.

When notice of such change in name has not been received by or filed with the commissioner prior to the twenty-ninth day preceding any election, such person may be permitted to vote under the name under which the person was registered prior to that change at the first election following such change in name at which the person shall appear to vote, after signing the signature copy register with both the registered name and his or her new name. The commissioner shall then revise accordingly the name of the registrant as it appears on the registrant's registration forms, make a photographic copy of the notice, and affix the original and copy of the notice to the registrant's permanent registration forms as hereinabove prescribed.

13. R.S.19:31-15 is amended to read as follows:

**Removal of name from registry; change of residence; confirmation.**

19:31-15. a. Upon receipt by the commissioner of registration of a county from a registered voter of that county of a request that the name of the registrant be removed from the registry list of voters of the county, the commissioner shall so remove the registrant's name from that list. Notice by a registered voter to the commissioner of registration of a county that the registrant has ceased to reside in the county shall, for the purposes of this subsection, be deemed a request for removal of the registrant's name from the county registry list.

b. The commissioner of registration of any county may agree with the United States Postal Service or its licensee to receive information provided by the Postal Service concerning the change by any Postal Service customer of that customer's address within the county. If it appears from information so received that a Postal Service customer registered to vote in the county has moved to a different address, then (1) if that address is within the county, the commissioner shall cause the registration records of the registrant to be corrected accordingly and shall transmit to the resident by forwardable mail a notice of the change and a postage prepaid, pre-addressed return form by which the registrant may verify or correct the address information, or (2) if that address is not within the county, the commissioner shall undertake the confirmation notice procedure prescribed under subsection d. of this section to confirm the change of address.

c. The commissioner of registration of a county shall cause the name of a registrant to be removed from the registry list of the county if the registrant (1) confirms in writing, by return of a confirmation notice as prescribed under subsection d. of this section or by other means, that the registrant has changed residence to a place outside the county, or (2) has failed to respond to a confirmation notice as so prescribed and has not, in any election during the period beginning on the date on which the commissioner sends the confirmation notice to the registrant and ending on the day after the second general election for federal office following that date on which the notice is sent, (a) voted, or (b) appeared to vote and, if necessary, correct the official record of the registrant's address.

Other than as provided under subsection a. of this section, the name of a registrant shall not be removed from the registry list of a county on the ground that the registrant has changed residence except as provided by this subsection.

d. A confirmation notice sent to ascertain whether a registrant continues to reside at the address from which that registrant is registered to vote shall be a postage prepaid and pre-addressed return card, sent by forwardable mail, which shall include: (1) space on which the registrant's current address may be entered; (2) the statement "To any voter who continues to reside at the residence address to which this notice is addressed or who no longer resides at that residence address but continues to reside in ..... (name of county): please mail or personally deliver this postage prepaid card to the commissioner of registration to whom it is addressed not later than ..... (calendar date of the 29th day preceding the next election to be held in the county). If you do not return this card by that date, then at any election held subsequent to that date and on or before ..... (calendar date of the day after the second general election for federal office following that date), you may be required at the polls to affirm or confirm your address before you are permitted to vote, and if you do not vote in an election during that period, your name will be removed from the registry of eligible voters."; and (3) a statement, the text of which shall be prescribed by the Secretary of State, setting forth the means by which a registrant who has changed residence to a county different from that in which is located the residence to which the notice was originally addressed may retain the right to vote.

e. The commissioner of registration shall correct the registry list of eligible voters in accordance with change of residence information obtained in conformity with the provisions of this section.

14. R.S.19:31-16 is amended to read as follows:

**Data on deaths filed by health officer.**

19:31-16. The health officer or other officer in charge of records of death in each municipality shall file with the commissioner of registration for the county in which the municipality is located once each month, during the first five days thereof, the age, date of death, and the names and addresses of all persons 18 years of age or older who have died within such municipality during the previous month. Upon receipt of such list the commissioner shall make such investigation as is necessary to establish to his satisfaction that such deceased person is registered as a voter in the county. If such fact is so established, the commissioner shall cause the registration and record of voting forms of the deceased

registrant to be transferred to the death file. If the deceased person was not so registered in the county, but the list filed with the commissioner indicates that the person maintained a residence in one or more other counties of this State, the commissioner shall notify the commissioner in that other county or those other counties of having received official notice of the death of the person, and any commissioner of such other county who receives such notification shall undertake the procedures prescribed herein with respect to the registration in that county of the decedent.

15. R.S.19:31-17 is amended to read as follows:

**Criminal conviction data; use.**

19:31-17. a. Once each month during the first five days thereof, the chief State election official shall notify the commissioner of registration of a county of any information which the official shall have received during the previous month from the United States Attorney under subsection g. of section 8 of Pub.L. 103-31 (42 U.S.C. § 1973gg-6) concerning the conviction of a resident of the county of a crime under the laws of the United States, or any other official action relating to such a conviction, that would constitute grounds for disfranchisement of the person under the laws of this State.

b. Once each month during the first five days thereof the prosecutor of the county shall deliver to the commissioner a list of the names and addresses of all persons and their ages and offenses who have been convicted during the previous month of a crime which would disfranchise them under the laws of this State, including therewith the date upon which judgment of conviction was entered against the person, and also including a statement of any sentence imposed by the court during the month upon any person so convicted during that month or any previous month; provided, however, if the address of the person so convicted is located in a county other than the county in which the conviction was obtained the said prosecutor shall mail a report of such conviction to the proper election official of the county in which the address of such person is located.

c. Upon the receipt of the notice prescribed under subsection a. of this section or the list prescribed under subsection b. hereof, the commissioner shall make such investigation as is necessary to establish to his satisfaction that the convicted person is registered to vote in the county. If it is so established, the commissioner shall cause the registration and record of voting forms of such



convicted registrant to be transferred to the conviction file. In the event the person so convicted is not registered at the time the list or report is received, the commissioner shall cause an index card to be made out and inserted in its proper place in the master index file bearing the information received from the State election official or a county prosecutor, and the person so convicted shall be denied the right to register. Such persons upon the restoration of their citizenship rights or upon being pardoned shall be required to register or reregister before being allowed to vote.

16. R.S.19:31-23 is amended to read as follows:

**Record of voting; maintenance of forms, EDP records.**

19:31-23. Following each election the commissioner shall cause the record of voting as shown on the record of voting forms in the signature copy registers or, in counties in which polling records are used in place of those signature copy registers pursuant to section 2 of P.L.1994, c.170 (C.19:31.3.3), as shown in the polling records, to be entered on the record of voting forms in the original registration binders or to be entered into electronic data processing equipment used to file and store voter information for the voters registered in a county, pursuant to section 1 of P.L.1994, c.170 (C.19:31-10.1). An entry of any record of voting which shall have been made by means of electronic data processing equipment under that section 1 shall be retained for a period of not less than six years following the election at which the vote so recorded was cast.

17. R.S.19:31-24 is amended to read as follows:

**Lost, destroyed records; general registration provided.**

19:31-24. In the event of the loss or destruction of any or all of the original or duplicate registration binders for any reason other than their elimination as permitted pursuant to sections 1 and 2, respectively, of P.L.1994, c.170 (C.19:31-10.1 and 19:31-3.3), or, in counties in which registration information has been filed and is stored by means of electronic data processing equipment in accordance with the provisions of that section 1 of P.L.1994, c.170, in the event of the loss or destruction of any or all of the original completed voter registration forms or any new or amended forms required under subsection c. of that section to be maintained in a permanent and separate file, the commissioner shall promptly provide for a general registration at the regular polling places in the district or districts for which the binders, registration forms,

or other official voter registration information have been lost or destroyed.

18. R.S.19:31-26 is amended to read as follows:

**Card index file; notations, information.**

19:31-26. Unless voter registration information is filed and stored in electronic data processing equipment in accordance with the provisions of subsection a. of section 1 of P.L.1994, c.170 (C.19:31-10.1), the commissioner shall make and maintain a card index file showing on separate cards the full name, address, municipality, ward and district, registration number and date of registration of each person registered in his county. This file shall be arranged alphabetically according to names irrespective of municipality, ward, district, registration number, and date of registration. Reasonably sufficient space shall be reserved on each card for the notations to be made thereon as herein provided.

The commissioner shall cause to be made notation on these cards as to each registrant respectively whose registration forms have been transferred from one register to another or to the inactive, death or conviction files concurrently with such transfer. The card with such notations shall show the location of the registration forms of each registrant at all times. All changes of address of the registrant, including those within the same district, shall be noted on these cards concurrently with changes of address on the registration forms.

19. Section 4 of P.L.1991, c.318 (C.34:1A-12.4) is amended to read as follows:

**C.34:1A-12.4 Director of Division of Worker's Compensation; duties.**

4. The Director of the Division of Worker's Compensation shall:

a. cause copies of the voter registration forms furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be prominently displayed at each public office of the division and to be made readily available to each individual who, when applying for benefits under R.S. 43:21-19 et seq., may wish, on a voluntary basis, to register to vote. An employee of the division shall provide the applicant with any assistance necessary in completing the form; shall inform the applicant that the applicant may leave the completed form with the employee; and, if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark it with the date on which it was so received, and forward it to the Secretary of State;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office of the division which distributes application forms for benefits administered by the division;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each office of the division which distributes application forms for benefits administered by the division which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4); and

d. provide for the collection of completed voter registration forms by any employee of the division who is employed in any office which distributes application forms for benefits administered by the division, and for the transmittal of the forms to the Secretary of State.

**C.19:31-6.12 Registration of persons in armed forces.**

20. The Secretary of State is authorized, on behalf of this State, to enter into and to carry out an agreement with the Secretary of Defense of the United States for joint development and implementation of procedures for persons to apply at recruitment offices of the Armed Forces of the United States to register as voters of this State. The terms of the agreement with respect to the implementation of those procedures shall conform as nearly as possible to the provisions for the implementation of such procedures at each agency or office providing or administering assistance under the "New Jersey Medical Assistance and Health Services Program" pursuant to the provisions of section 28 of P.L.1994, c.182 (C.30:4D-19.1).

21. Section 9 of P.L.1991, c.318 (C.44:1-24.2) is amended to read as follows:

**C.44:1-24.2 Chief administrative officer of county welfare agencies or boards of social services; duties.**

9. The superintendent, director or other chief administrative officer of each county welfare agency or county board of social services shall:

a. cause copies of the voter registration forms furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at the offices of the agency or board to each person appearing in person at that location to apply for services under any program administered by the

office or to seek a recertification, renewal or change of address relative to the assistance provided at such office. An employee of the office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine whether or not the applicant wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the applicant wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the person that the person may leave the completed form with the employee or mail it personally to the Secretary of State; and, if the person chooses to leave the form, shall accept the completed form, stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received, and forward it to the county commissioner of registration. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the division with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office of the agency or board;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to the location in the case of any office on aging which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);

d. provide for the collection of completed voter registration forms by any employee of the office and for the transmittal of the forms to the county commissioner of registration or the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any applicant with a disability who receives assistance or services at that person's home from an agent or employee of the agency or board;

f. inform each agent or employee of the agency or board who assists in registering a person to vote that that agent or employee shall not:

(1) seek to influence an applicant's political preference or party registration;

(2) display any such political preference or party allegiance;

(3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; and

g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of application for service made by that individual at an office of the agency or board is used for any purpose other than voter registration.

22. Section 7 of P.L.1991, c.318 (C.52:18A-24.1) is amended to read as follows:

**C.52:18A-24.1 Director of the Division of Taxation; duties.**

7. The Director of the Division of Taxation shall:

a. cause copies of the voter registration forms furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be included in the pamphlet of instructions concerning the filing with the division of a tax return required to be filed under the "New Jersey Gross Income Tax Act", P.L.1976, c.47 (N.J.S.54A:1-1 et seq.), and also to be prominently displayed at each public office of the division and to be made readily available to each person who, when appearing in person at that office, may wish, on a voluntary basis, to register to vote. An employee of the division shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's legal obligation under any law administered by the division. The employee shall provide the person with any assistance necessary in completing the form; shall inform the person that the person may leave the completed form with the employee; and, if the person chooses to leave the form, shall accept the completed form, stamp or otherwise mark it with the date on which it was so received, and forward it to the Secretary of State;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office of

the division which provides assistance to the public with respect to the laws administered by the division;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each office of the division which provides assistance to the public with respect to the laws administered by the division which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4); and

d. provide for the collection of completed voter registration forms by any employee of the division who is employed in any office which provides assistance to the public with respect to the laws administered by the division, and for the transmittal of the forms to the Secretary of State.

**C.39:3-10m Applicants for license; opportunity to register to vote.**

23. Notwithstanding any law, rule or regulation to the contrary, each applicant for a State motor vehicle driver's license application, including any application for a renewal thereof, submitted to an agent of the Division of Motor Vehicles in the Department of Law and Public Safety shall be offered an opportunity to register to vote.

**C.39:2-3.2 Cooperation by Division of Motor Vehicles to register voters.**

24. a. The Secretary of State, with the assistance and concurrence of the Director of the Division of Motor Vehicles, shall formulate a means of permitting a person to simultaneously apply for a motor vehicle driver's license and to register to vote which satisfies both the requirements necessary to receive a license to operate a motor vehicle, pursuant to R.S.39:3-10, and to be permitted to register to vote, pursuant to R.S.19:4-1.

The Division of Motor Vehicles, upon receipt of a completed voter registration application under this section, shall stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received and forward the document to the Secretary of State no later than the 10th day following the date of acceptance.

b. Each application for voter registration which is received by the Division of Motor Vehicles shall be considered and processed as the replacement for any pre-existing voter registration of the applicant.

c. Each change of address notification submitted to the Director of the Division of Motor Vehicles for the purpose of maintaining current information on a person's motor vehicle license shall be reported to the Secretary of State no later than the

10th day following its receipt by the Division of Motor Vehicles and shall serve as notification for the change of address process, unless the registrant indicates that the change of address is not for voter registration purposes.

**C.19:31-6a Chief State election officer designated.**

25. The Secretary of State is designated the chief State election official and shall be responsible for the coordination of this State's responsibilities pursuant to the provisions of the "National Voter Registration Act of 1993," Pub.L. 103-31 (42 U.S.C. § 1973gg et seq.).

**C.19:31-6.11 Voter registration agency defined; declination forms, contents.**

26. a. As used in this section, "voter registration agency" means:

Any agency or office serving as a food stamp issuer, pursuant to P.L.1988, c.79 (C.44:8-153 et seq.) and the "Food Stamp Act of 1977," Pub.L. 95-113 (7 U.S.C. §2011 et seq.);

Any agency or office providing or administering assistance under the "New Jersey Medical Assistance and Health Services Program," pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.) and 42 U.S.C. §1395 et seq.;

Any agency or office distributing food pursuant to the special supplemental food program for women, infants and children (WIC), established pursuant to P.L.1987, c.261 (C.26:1A-36.1 et seq.) and Pub.L. 95-267 (42 U.S.C. §1786);

Any agency or office administering assistance under the "Aid to Families With Dependent Children Program," established pursuant to P.L.1959, c.86 (C.44:10-1) and 42 U.S.C. §601 et seq.;

Any public office of the Division of Developmental Disabilities, established pursuant to section 2 of P.L.1985, c.145 (C.30:6D-24), in the Department of Human Services;

Any recruitment office of the Armed Forces of the United States, subject to any agreement between this State and the Secretary of Defense of the United States for the joint development and implementation, as provided under subsection (c) of section 7 of Pub.L.103-31 (42 U.S.C. § 1973gg-6), of procedures for applying at those offices to register to vote;

Any office of the Division of Vocational Rehabilitation Services of the New Jersey Department of Labor;

Any office of the Commission for the Blind and Visually Impaired of the New Jersey Department of Human Services;

Any county welfare agency or county board of social services established pursuant to the provisions of chapter 1 or chapter 4 of Title 44 of the Revised Statutes;

The office of the commissioner of registration in the several counties of this State; and

Any office of the municipal clerk in the several municipalities of this State.

b. With each voter registration form and instructions provided to the chief administrative officer at each voter registration agency under subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4), the Secretary of State shall provide at the same time a declination form that includes:

(1) the question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(2) the statement: "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(3) boxes for the applicant to check to indicate whether the applicant would or would not like to register to vote, together with the statement "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(4) the statement: "If you would like help in filling out the voter registration application form, we will help you. The decision to seek or accept help is yours. You may fill out the application form in private.";

(5) the statement: "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Secretary of State." (insert address and current telephone number); and

(6) the statement: IF YOU DECLINE TO REGISTER TO VOTE AT THIS TIME, YOUR DECISION WILL REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES. IF YOU DO REGISTER TO VOTE, THE WAY IN WHICH YOU DO SO WILL REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES.

c. The Secretary of State shall cause to be prepared declination forms in the form provided for by subsection b. of this section in both the English and Spanish languages and shall provide such forms to the chief administrative officer of each voter registration agency which has an office in any county in which there is at least one election district in which bilingual sample



ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

d. The Secretary of State shall adopt, pursuant to consultation with the chief administrative officers at voter registration agencies, regulations for the prompt return of the completed voter registration forms, but in no case shall the forms be returned later than the fifth day following the date on which the completed forms are received by the voter registration agencies.

e. All registration forms received by the Secretary of State in the mail or forwarded to the Secretary of State by employees or agents of the voter registration agencies shall be forwarded to the commissioner of registration in the county of the registrant.

f. Each completed declination form received by a voter registration agency shall be kept confidential for a period of at least two years. The Secretary of State shall determine, pursuant to consultation with the chief administrative officers at voter registration agencies, which office or agency shall retain the declination forms.

**C.44:8-158 Food stamp issuer; duties.**

27. The director or other chief administrative officer of each agency or office serving as a food stamp issuer shall:

a. cause copies of the voter registration forms and instructions provided for under subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at each such agency or office to each person appearing in person thereat to apply for services or assistance provided thereby or to seek a recertification, renewal or change of address relative to the assistance provided at such office. An employee of the agency or office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine whether or not the person wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the person wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the appli-

cant that the applicant may leave the completed form with the employee or mail it personally to the Secretary of State; and if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark the lower right hand of the document with the date on which it was so received, and forward it to the Secretary of State. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every agency and office which provides assistance under P.L.1988, c.79 (C.44:8-153 et seq.) and the "Food Stamp Act of 1977," Pub.L.95-113 (7 U.S.C. §2011 et seq.);

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to the agencies and offices which are located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);

d. provide for the collection of completed voter registration forms by any employee of the agency or office for the transmittal of the forms to the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any person with a disability who receives assistance or services at that person's home from an employee of the agency or office;

f. inform each employee of the agency or office who assists in registering a person to vote that that employee shall not:

(1) seek to influence an applicant's political preference or party registration;

(2) display any such political preference or party allegiance;

(3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; and

g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of

application for service made by that individual at any agency or office is used for any purpose other than voter registration.

**C.30:4D-19.1 "New Jersey Medical Assistance and Health Services Program" administrators, duties.**

28. The director or other chief administrative officer of each agency or office providing or administering assistance under the "New Jersey Medical Assistance and Health Services Program" shall:

a. cause copies of the voter registration forms and instructions provided for under subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at each such agency or office to each person appearing in person thereat to apply for services or assistance provided thereby or to seek a recertification, renewal or change of address relative to the assistance provided at such office. An employee of the agency or office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine whether or not the person wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the person wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the applicant that the applicant may leave the completed form with the employee or mail it personally to the Secretary of State; and if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received, and forward it to the Secretary of State. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every agency and

office which provides assistance under P.L.1968, c.413 (C.30:4D-1 et seq.) and 42 U.S.C. §1395 et seq.;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to the agencies and offices which are located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);

d. provide for the collection of completed voter registration forms by any employee of the agency or office for the transmittal of the forms to the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any person with a disability who receives assistance or services at that person's home from an employee of the agency or office;

f. inform each employee of the agency or office who assists in registering a person to vote that that employee shall not:

(1) seek to influence an applicant's political preference or party registration;

(2) display any such political preference or party allegiance;

(3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; and

g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of application for service made by that individual at any agency or office is used for any purpose other than voter registration.

**C.26:1A-36.3a WIC supplemental food program administrators, duties.**

29. The director or other chief administrative officer of each agency or office distributing food pursuant to the special supplemental food program for women, infants and children (WIC) shall:

a. cause copies of the voter registration forms and instructions provided for under subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at each such agency or office to each person appearing in person thereat to apply for services or assistance provided thereby or to seek a recertification, renewal or change of address relative to the

assistance provided at such office. An employee of the agency or office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine whether or not the person wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the person wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the applicant that the applicant may leave the completed form with the employee or mail it personally to the Secretary of State; and if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received, and forward it to the Secretary of State. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every agency and office which provides assistance under P.L.1987, c.261 (C.26:1A-36.1 et seq.) and Pub.L. 95-267 (42 U.S.C. §1786);

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to the agencies and offices which are located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);

d. provide for the collection of completed voter registration forms by any employee of the agency or office for the transmittal of the forms to the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any person with a disability who receives assistance or services at that person's home from an employee of the agency or office;

f. inform each employee of the agency or office who assists in registering a person to vote that that employee shall not:

- (1) seek to influence an applicant's political preference or party registration;
  - (2) display any such political preference or party allegiance;
  - (3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
  - (4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; and
- g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of application for service made by that individual at any agency or office is used for any purpose other than voter registration.

**C.44:10-5.9 "Aid to Families With Dependent Children" administrators, duties.**

30. The director or other chief administrative officer of each agency or office administering assistance under the "Aid to Families With Dependent Children" program shall:

- a. cause copies of the voter registration forms and instructions provided for under subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at each such agency or office to each person appearing in person thereat to apply for services or assistance provided thereby or to seek a recertification, renewal or change of address relative to the assistance provided at such office. An employee of the agency or office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine whether or not the person wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the person wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the applicant that the applicant may leave the completed form with the employee or mail it personally to the Secretary of State; and if the applicant chooses to leave the form,

shall accept the completed form, stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received, and forward it to the Secretary of State. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every agency and office which provides assistance under P.L.1959, c.86 (C.44:10-1) and 42 U.S.C. §601 et seq.;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to the agencies and offices which are located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);

d. provide for the collection of completed voter registration forms by any employee of the agency or office for the transmittal of the forms to the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any person with a disability who receives assistance or services at that person's home from an employee of the agency or office;

f. inform each employee of the agency or office who assists in registering a person to vote that that employee shall not:

(1) seek to influence an applicant's political preference or party registration;

(2) display any such political preference or party allegiance;

(3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; and

g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of application for service made by that individual at any agency or office is used for any purpose other than voter registration.

**C.30:6D-27.1 Division of Development Disabilities administrators, duties.**

31. The director or other chief administrative officer of any public office of the Division of Developmental Disabilities shall:

a. cause copies of the voter registration forms and instructions provided for under subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at each such office to each person appearing in person thereat to apply for services or assistance provided thereby or to seek a recertification, renewal or change of address relative to the assistance provided at such office. An employee of the office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine whether or not the person wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the person wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the applicant that the applicant may leave the completed form with the employee or mail it personally to the Secretary of State; and if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received, and forward it to the Secretary of State. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office which provides assistance under section 2 of P.L.1985, c.145 (C.30:6D-24);

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to the offices which are located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);



d. provide for the collection of completed voter registration forms by any employee of the office for the transmittal of the forms to the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any person with a disability who receives assistance or services at that person's home from an employee of the office;

f. inform each employee of the office who assists in registering a person to vote that that employee shall not:

(1) seek to influence an applicant's political preference or party registration;

(2) display any such political preference or party allegiance;

(3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; and

g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of application for service made by that individual at any office is used for any purpose other than voter registration.

**C.34:16-29.1 Division of Vocational Rehabilitation Services administrators, duties.**

32. The director or other chief administrative officer of the Division of Vocational Rehabilitation Services in the Department of Labor shall:

a. cause copies of the voter registration forms and instructions provided for in subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at each office thereof to each person appearing in person at the office to apply for services or assistance provided by the office or to seek a recertification, renewal or change of address relative to the assistance provided at such office. An employee of the office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine

whether or not the person wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the person wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the applicant that the applicant may leave the completed form with the employee or mail it personally to the Secretary of State; and if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received, and forward it to the Secretary of State. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to each such office;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages in those offices which are located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);

d. provide for the collection of completed voter registration forms by any employee of the office and for the transmittal of the forms to the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any person with a disability who receives assistance or services at that person's home from an employee of the office;

f. inform each employee of the office who assists in registering a person to vote that that employee shall not:

(1) seek to influence an applicant's political preference or party registration;

(2) display any such political preference or party allegiance;

(3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that

a decision to register or not to register has any bearing on the availability of services or benefits; and

g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of application for service made by that individual at any office is used for any purpose other than voter registration.

**C.30:6-1.6 Commission for the Blind and Visually Impaired administrators, duties.**

33. The director or other chief administrative officer of any public office of the Commission for the Blind and Visually Impaired shall:

a. cause copies of the voter registration forms and instructions provided for under subsections e. and f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) and the declination form provided for in subsection b. of section 26 of P.L.1994, c.182 (C.19:31-6.11) to be distributed at each such office to each person appearing in person thereat to apply for services or assistance provided thereby or to seek a recertification, renewal or change of address relative to the assistance provided at such office. An employee of the office shall inquire of every such person whether the person, if not already registered to vote from the place of his or her present residence, wishes to be so registered and shall inform the person that whether or not the applicant chooses to register will not affect the person's eligibility for those services. The employee shall subsequently review the forms to determine whether or not the person wishes to register to vote. If the person does not wish to register, the employee shall provide the person with any assistance necessary to complete the declination form and then inform the person that the form will be retained by the employee. If the person wishes to register, the employee shall provide the person with any assistance necessary in completing the voter registration form; shall inform the applicant that the applicant may leave the completed form with the employee or mail it personally to the Secretary of State; and if the applicant chooses to leave the form, shall accept the completed form, stamp or otherwise mark the lower right hand corner of the document with the date on which it was so received, and forward it to the Secretary of State. The employee shall provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the voter registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to every office of the commission which provides assistance;

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages in those offices which are located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4);

d. provide for the collection of completed voter registration forms by any employee of the office and for the transmittal of the forms to the Secretary of State;

e. provide that the forms, instructions and assistance specified in subsection a. of this section shall be provided to any person with a disability who receives assistance or services at that person's home from an employee of the office;

f. inform each employee of the office who assists in registering a person to vote that that employee shall not:

(1) seek to influence an applicant's political preference or party registration;

(2) display any such political preference or party allegiance;

(3) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits; and

g. make certain that no information relating to a declination to register to vote by an individual in connection with any type of application for service made by that individual at any office is used for any purpose other than voter registration.

**C.19:31-6.13 Commissioners of registration, registration assistance.**

34. The commissioner of registration in each of the several counties shall make available at the office of the commissioner to each person appearing in person thereat to apply for services or assistance provided thereby the assistance in registration prescribed by paragraph (4) of subsection (a) of section 7 of Pub.L.103-31 (42 U.S.C. § 1973gg-5). Any person providing such assistance in registration shall be subject to the restrictions of paragraph (5) of that subsection.

**C.19:31-7.1 Municipal clerks, registration assistance.**

35. The municipal clerk in each of the several municipalities of this State shall make available at the office of the clerk to each person appearing in person thereat to apply for services or assistance provided thereby the assistance in registration prescribed by paragraph (4) of subsection (a) of section 7 of Pub.L. 103-31 (42 U.S.C. § 1973gg-5). Any person providing such assistance in registration shall be subject to the restrictions of paragraph (5) of that subsection.

**C.40:33-8.2 Free county library administrators, duties.**

36. The director or other chief administrative officer of each free county library shall:

a. cause copies of the voter registration forms and instructions furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be displayed at the principal and any branch location of that library and to be made available to each person who, when appearing in person at such location to apply for services administered by the library, may wish, on a voluntary basis, to register to vote;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to each such principal or branch location; and

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each library which provides services under any program administered by the library which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

**C.40:33-13.9a Regional library administrators, duties.**

37. The director or other chief administrative officer of each regional library established under the provisions of P.L.1962, c.134 (C.40:33-13.3 et seq.) shall:

a. cause copies of the voter registration forms and instructions furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be displayed at the principal and any branch location of that library and to be made available to each person who, when appearing in person at such location, may wish, on a voluntary basis, to register to vote;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to each such principal or branch location; and

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each

library which provides services under any program administered by the library which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

**C.40:54-12.2 Free public library administrators, duties.**

38. The director or other chief administrative officer of a free public library in any municipality shall:

a. cause copies of the voter registration forms and instructions furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be displayed at the principal and any branch location of that library and to be made available to each person who, when appearing in person at such location, may wish, on a voluntary basis, to register to vote;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to each such principal or branch location; and

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each library which provides services under any program administered by the library which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

**C.40:54-29.13a Joint free public library administrators, duties.**

39. The director or other chief administrative officer of a joint free public library serving two or more municipalities shall:

a. cause copies of the voter registration forms and instructions furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be displayed at the principal and any branch location of that library and to be made available to each person who, when appearing in person at such location, may wish, on a voluntary basis, to register to vote;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to each such principal or branch location; and

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each library which provides services under any program administered by the library which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

**C.52:14-34.7 State license, permit establishments, administrators, duties.**

40. The manager or other chief administrative officer of any office or commercial establishment where State licenses or permits, other than licenses or permits issued by a professional or occupational board established under the laws of this State, are available to individual members of the public shall:

a. cause copies of the voter registration forms and instructions furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be displayed at the office or commercial establishment and to be made available to each person who, when appearing in person at such location to obtain a State license or permit, may wish, on a voluntary basis, to register to vote;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to each such office or establishment; and

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each office or establishment which provides services under any program administered thereby which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

**C.38A:3-6.19 Adjutant General, duties.**

41. The Adjutant General of the Department of Military and Veterans' Affairs shall:

a. cause copies of the voter registration forms and instructions furnished under subsection f. of section 16 of P.L.1974, c.30 (C.19:31-6.4) to be displayed at each recruitment office of the New Jersey National Guard and to be made available to each person who, when appearing in person at such office to apply for enlistment in the Guard, may wish, on a voluntary basis, to register to vote;

b. provide for the continuous supply of the forms and instructions specified in subsection a. of this section to each such office; and

c. provide the forms and instructions specified in subsection a. of this section in both the English and Spanish languages to each recruitment office of the New Jersey National Guard which is located in any county in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c.29 (C.19:23-22.4).

**C.19:31-29 Violations, relief; actions.**

42. a. Any person who believes that he or she has been denied an opportunity to register to vote or to remain a registered voter in

violation of the provisions of P.L.1994, c.182 (C.19:31-6.11 et al.), may seek relief by providing written notice to the Secretary of State. Such notice shall include the date which the person seeking relief believes the violation to have occurred and as many of the particulars relative to the violation as that person can recount. The notice shall also include the name and address of the person seeking relief and shall be certified by that person's signature.

b. If the violation of the provisions of P.L.1994, c.182 (C.19:31-6.11 et al.) has not been investigated or corrected within 90 days after the Secretary of State receives written notice of the violation, or within 20 days after the Secretary of State receives written notice of the violation if the violation occurred within 120 days prior to the day of an election, the aggrieved person may bring a civil action in the appropriate superior court for declaratory or injunctive relief with respect to the violation.

c. If the violation occurred within 30 days prior to the day of an election, the aggrieved person shall not be required to first provide written notice to the Secretary of State, as provided for in subsection a. of this section, but may instead bring a civil action in the appropriate superior court, as provided for in subsection b. of this section.

d. In any civil actions brought under subsections b. or c. of this section, the superior court may allow the prevailing party, other than the United States, reasonable attorney fees, including litigation fees and costs.

**C.19:34-1.1 Crimes; election official defined.**

43. a. Any person, other than an election official, who:

(1) knowingly and willfully intimidates, threatens or coerces, or attempts to intimidate, threaten or coerce, any person for registering to vote, voting or attempting to register to vote or vote, urging or aiding any person to register to vote, to vote or to attempt to register or vote or exercising any right under the provisions of P.L.1994, c.182 (C.19:31-6.11 et al.); or

(2) knowingly and willfully deprives, defrauds or attempts to deprive or defraud the residents of this State of a fair and impartially conducted election by the procurement or submission of voter registration applications that are known by the person to be materially false, fictitious or fraudulent under the provisions of Title 19 of the Revised Statutes or the procurement, casting or tabulation of ballots that are known by the person to be materially false, fictitious or fraudulent under the provisions of Title 19 of the Revised Statutes, is guilty of a crime of the third degree.



b. Any election official who:

(1) knowingly and willfully intimidates, threatens or coerces, or attempts to intimidate, threaten or coerce, any person for registering to vote, voting or attempting to register to vote or vote, urging or aiding any person to register to vote, to vote or to attempt to register or vote, or exercising any right under the provisions of P.L.1994, c.182 (C.19:31-6.11 et al.); or

(2) knowingly and willfully deprives, defrauds or attempts to deprive or defraud the residents of this State of a fair and impartially conducted election by the procurement or submission of voter registration applications that are known by the election official to be materially false, fictitious or fraudulent under the provisions of Title 19 of the Revised Statutes or the procurement, casting or tabulation of ballots that are known by the election official to be materially false, fictitious or fraudulent under the provisions of Title 19 of the Revised Statutes, is guilty of a crime of the second degree.

c. As used in this section, "election official" shall include, but not be limited to, any superintendent or deputy superintendent of elections, commissioner of registration, member of a county board of elections, county clerk, municipal clerk, member of a district board of elections, member of a board of county canvassers and member of a board of State canvassers.

**C.19:31-30 Rules, regulations.**

44. The Secretary of State shall promulgate, pursuant to 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.

**Repealer.**

45. The following sections are repealed:

R.S.19:31-9;

P.L.1940, c.53 (C.19:31-27 and 19:31-28);

Section 1 of P.L.1941, c.218 (C.19:31-1.1);

Section 1 of P.L.1940, c.54 (C.19:31-11.1);

R.S.19:32-15 through 19:32-20;

Sections 13 through 18 of P.L.1947, c.167 (C.19:32-38 through 19:32-43); and

Section 3 of P.L.1991, c.318 (C.39:2-3.1).

46. This act shall take effect immediately but shall remain inoperative until January 1, 1995.

Approved December 20, 1994.

## CHAPTER 183

AN ACT increasing the penalties for leaving the scene of a motor vehicle accident, amending R.S.39:4-129 and R.S.39:4-130.

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

1. R.S.39:4-129 is amended to read as follows:

**Action in case of accident.**

39:4-129. (a) The driver of any vehicle, knowingly involved in an accident resulting in injury or death to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene until he has fulfilled the requirements of subsection (c) of this section. Every such stop shall be made without obstructing traffic more than is necessary. Any person who shall violate this subsection shall be fined not less than \$500 nor more than \$1,000 or be imprisoned for a period of 180 days, or both, for the first offense, and for a subsequent offense shall be fined not less than \$1,000 nor more than \$2,000, or be imprisoned for a period of 180 days, or both. The term of imprisonment required by this subsection shall be imposed only if the accident resulted in death or injury to a person other than the driver convicted of violating this section.

In addition, any person convicted under this subsection shall forfeit his right to operate a motor vehicle over the highways of this State for a period of one year from the date of his conviction for the first offense and for a subsequent offense shall thereafter permanently forfeit his right to operate a motor vehicle over the highways of this State.

(b) The driver of any vehicle knowingly involved in an accident resulting only in damage to a vehicle, including his own vehicle, or other property which is attended by any person shall immediately stop his vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of subsection (c) of this section. Every such stop shall be made without obstructing traffic more than is necessary. Any person who shall violate this subsection shall be fined not less than \$200 nor more than \$400, or be imprisoned for a period of not more than 30 days, or both, for the first offense,

and for a subsequent offense, shall be fined not less than \$400 nor more than \$600, or be imprisoned for a period of not less than 30 days nor more than 90 days or both.

In addition, a person who violates this subsection shall, for a first offense, forfeit the right to operate a motor vehicle in this State for a period of six months from the date of conviction, and for a period of one year from the date of conviction for any subsequent offense.

(c) The driver of any vehicle knowingly involved in an accident resulting in injury or death to any person or damage to any vehicle or property shall give his name and address and exhibit his operator's license and registration certificate of his vehicle to the person injured or whose vehicle or property was damaged and to any police officer or witness of the accident, and to the driver or occupants of the vehicle collided with and render to a person injured in the accident reasonable assistance, including the carrying of that person to a hospital or a physician for medical or surgical treatment, if it is apparent that the treatment is necessary or is requested by the injured person.

In the event that none of the persons specified are in condition to receive the information to which they otherwise would be entitled under this subsection, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (a) and (b) of this section, insofar as possible on his part to be performed, shall forthwith report such accident to the nearest office of the local police department or of the county police of the county or of the State Police and submit thereto the information specified in this subsection.

(d) The driver of any vehicle which knowingly collides with or is knowingly involved in an accident with any vehicle or other property which is unattended resulting in any damage to such vehicle or other property shall immediately stop and shall then and there locate and notify the operator or owner of such vehicle or other property of the name and address of the driver and owner of the vehicle striking the unattended vehicle or other property or, in the event an unattended vehicle is struck and the driver or owner thereof cannot be immediately located, shall attach securely in a conspicuous place in or on such vehicle a written notice giving the name and address of the driver and owner of the vehicle doing the striking or, in the event other property is struck and the owner thereof cannot be immediately located, shall notify the nearest office of the local police department or of the county police of the county or of the State Police and in addition shall

notify the owner of the property as soon as the owner can be identified and located. Any person who violates this subsection shall be punished as provided in subsection (b) of this section.

(e) The driver of any motor vehicle involved in an accident resulting in injury or death to any person or damage in the amount of \$250.00 or more to any vehicle or property shall be presumed to have knowledge that he was involved in such accident, and such presumption shall be rebuttable in nature.

For purposes of this section, it shall not be a defense that the operator of the motor vehicle was unaware of the existence or extent of personal injury or property damage caused by the accident as long as the operator was aware that he was involved in an accident.

2. R.S.39:4-130 is amended to read as follows:

**Immediate notice of accident; written report.**

39:4-130. The driver of a vehicle or street car involved in an accident resulting in injury to or death of any person, or damage to property of any one person in excess of \$500.00 shall by the quickest means of communication give notice of such accident to the local police department or to the nearest office of the county police of the county or of the State Police, and in addition shall within 10 days after such accident forward a written report of such accident to the division on forms furnished by it. Such written reports shall contain sufficiently detailed information with reference to a motor vehicle accident, including the cause, the conditions then existing, the persons and vehicles involved and such information as may be necessary to enable the director to determine whether the requirements for the deposit of security required by law are inapplicable by reason of the existence of insurance or other circumstances. The director may rely upon the accuracy of the information contained in any such report, unless he has reason to believe that the report is erroneous. The division may require operators involved in accidents to file supplemental reports of accidents upon forms furnished by it when in the opinion of the division, the original report is insufficient. The reports shall be without prejudice, shall be for the information of the division, and shall not be open to public inspection. The fact that the reports have been so made shall be admissible in evidence solely to prove a compliance with this section, but no report or any part thereof or statement contained therein shall be admissible in evidence for any other purpose in any proceeding or action arising out of the accident.

Whenever the driver of a vehicle is physically incapable of giving immediate notice or making a written report of an accident as required in this section and there was another occupant in the vehicle at the time of the accident capable of giving notice or making a report, such occupant shall make or cause to be made said notice or report not made by the driver.

Whenever the driver is physically incapable of making a written report of an accident as required by this section and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall make such report not made by the driver.

A written report of an accident shall not be required by this section if a law enforcement officer submits a written report of the accident to the division pursuant to R.S.39:4-131.

Any person who knowingly violates this section shall be fined not less than \$30 or more than \$100.

The director may revoke or suspend the operator's license privilege and registration privilege of a person who violates this section.

For purposes of this section, it shall not be a defense that the operator of the motor vehicle was unaware of the existence or extent of personal injury or property damage caused by the accident as long as the operator was aware that he was involved in an accident.

3. This act shall take effect immediately.

Approved December 23, 1994.

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#### CHAPTER 184

AN ACT concerning driving while under the influence of liquor or drugs, amending R.S. 39:4-50, P.L.1981, c.512, P.L.1984, c.4 and R.S.39:5-25.

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

1. 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.

Whenever an operator of a motor vehicle has been involved in an accident resulting in death, bodily injury or property damage, a police officer shall consider that fact along with all other facts

and circumstances in determining whether there are reasonable grounds to believe that person was operating a motor vehicle in violation of this section.

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 discov-



ery 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.

2. Section 2 of P.L.1981, c.512 (C.39:4-50.4a) is amended to read as follows:

**C.39:4-50.4a Revocation for refusal to submit to breath test; penalties.**

2. The municipal court shall revoke the right to operate a motor vehicle of any operator who, after being arrested for a violation of R.S.39:4-50, shall refuse to submit to a test provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2) when requested to do so, for six months unless the refusal was in connection with a second offense under this section, in which case the revocation period shall be for two years or unless the refusal was in connection with a third or subsequent offense under this section, in which case the revocation shall be for 10 years.

The municipal court shall determine by a preponderance of the evidence whether the arresting officer had probable cause to believe that the person had been driving or was in actual physical control of a motor vehicle on the public highways or quasi-public areas of this State while the person was under the influence of intoxicating liquor or a narcotic, hallucinogenic, or habit-producing drug or marihuana; whether the person was placed under arrest, if appropriate; and whether he refused to submit to the test upon request of the officer; and if these elements of the violation are not established, no conviction shall issue. In addition to any other requirements provided by law, a person whose operator's license is revoked for refusing to submit to a test shall be referred to an Intoxicated Driver Resource Center established by subsection (f) of R.S.39:4-50 and shall satisfy the same requirements of the center for refusal to submit to a test as provided for in section 2 of P.L.1966, c.142 (C.39:4-50.2) in connection with a first, second, third or subsequent offense under this section that must be satisfied by a person convicted of a commensurate violation of this section, or be subject to the same penalties as such a person for failure to do so. The revocation shall be independent of any revocation imposed by virtue of a conviction under the provisions of R.S.39:4-50.

In addition to issuing a revocation, the municipal court shall fine a person convicted under this section, a fine of not less than \$250.00 nor more than \$500.00.

3. Section 1 of P.L.1984, c.4 (C.39:4-50.8) is amended to read as follows:

**C.39:4-50.8 Drunk Driving Enforcement Fund.**

1. Upon a conviction of a violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a), the court shall collect from the

defendant a surcharge of \$100.00 in addition to and independently of any fine imposed on that defendant. The court shall forward the surcharge to the Director of the Division of Motor Vehicles who shall deposit \$95.00 of the surcharge into a "Drunk Driving Enforcement Fund" (hereinafter referred to as the "fund"). This fund shall be used to establish a Statewide drunk driving enforcement program to be supervised by the director. The remaining \$5.00 of each surcharge shall be deposited by the director into a separate fund for administrative expenses.

A municipality shall be entitled to periodic grants from the "Drunk Driving Enforcement Fund" in amounts representing its proportionate contribution to the fund. A municipality shall be deemed to have contributed to the fund the portion of the surcharge allocated to the fund, collected pursuant to this section if the violation of R.S.39:4-50 or section 2 of P.L.1981, c.512 (C.39:4-50.4a) occurred within the municipality and the arrest resulting in conviction was made by the member of a municipal police force. The grants from the fund shall be used by the municipality to increase enforcement of R.S.39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the director. The Division of State Police, interstate law enforcement agencies and county law enforcement agencies shall be entitled to periodic grants from the fund in amounts representing their proportionate contribution to the fund. The Division of State Police or county or interstate law enforcement agency shall be deemed to have contributed to the fund the portion of the surcharge allocated to the fund collected pursuant to this section if the arrest resulting in a conviction was made by a member of the Division of State Police or county or interstate law enforcement agency. The grants from the fund shall be used by the Division of State Police or county or interstate law enforcement agency to increase enforcement of R.S.39:4-50 by subsidizing additional law enforcement patrols and through other measures approved by the director.

The surcharge described herein shall not be considered a fine, penalty or forfeiture to be distributed pursuant to R.S.39:5-41.

The director shall promulgate rules and regulations in order to effectuate the purposes of this section.

4. R.S. 39:5-25 is amended to read as follows:

**Arrest without warrant.**

39:5-25. Any law enforcement officer may, without a warrant, arrest any person violating in his presence any provision of chapter 3 of this Title, or any person, other than a motorman or person having control of a street car or auto bus, running upon a route approved by the Board of Public Utilities, violating in his presence any provision of chapter 4 of this Title. A law enforcement officer may arrest without a warrant any person who the officer has probable cause to believe has operated a motor vehicle in violation of R.S.39:4-50 or section 5 of P.L. 1990, c. 103 (C.39:3-10.13), regardless of whether the suspected violation occurs in the officer's presence. The exemption from arrest of a motorman or person having control of a street car or auto bus, as conferred herein, shall not operate to prevent his arrest, however, for a violation of R.S.39:4-50. The arresting officer shall bring any person so arrested before any judge of the municipal court of the municipality wherein the offense is committed, or before the director at any place designated as his office. If the arrest is for a violation of R.S.39:4-50, the arresting officer may, if no judge, clerk or deputy clerk is available, detain the person arrested, either in any police station, lockup or other place maintained by any municipality for the detention of offenders or in the common jail of the county, for such reasonable time as will permit the arresting officer to obtain a warrant for the offender's further detention, which temporary detention shall not exceed 24 hours from the time of the arrest. If the arrest is for a violation of any other provision of this subtitle, the person arrested shall be detained in the police station or municipal court until the arresting officer makes a complaint and a warrant issues.

Any law enforcement officer may, instead of arresting an offender as herein provided, serve upon him a summons.

5. This act shall take effect immediately.

Approved December 23, 1994.

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**CHAPTER 185**

**AN ACT concerning the refunding of certain county and municipal pension systems and amending P.L.1985, c.67 and P.L.1985, c.68.**

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

1. Section 1 of P.L.1985, c.67 (C.40A:2-51.1) is amended to read as follows:

**C.40A:2-51.1 Issuance of refunding bonds.**

1. Notwithstanding the provisions of N.J.S.40A:2-51 to the contrary, a county or a municipality in which a pension fund has been established pursuant to P.L.1943, c.160 (C.43:10-18.1 et seq.), R.S.43:10-1 through R.S.43:10-18, P.L.1948, c.310 (C.43:10-18.50 et seq.), or P.L.1954, c.218 (C.43:13-22.3 et seq.), may incur indebtedness, borrow money, authorize and issue negotiable refunding bonds, and in any amount determined to be necessary by the county or the municipality and approved by the Local Finance Board to effect the refunding for the purpose of the actuarial liabilities of its pension system, in addition to the other purposes for which it may do the same under N.J.S.40A:2-51.

2. Section 1 of P.L.1985, c.68 (C.40A:11-15.1) is amended to read as follows:

**C.40A:11-15.1 Insurance contract to fund actuarial liability.**

1. Notwithstanding the provisions of subsection (6) of section 15 of P.L.1971, c.198 (C.40A:11-15) to the contrary, a county or a municipality in which a pension fund has been established pursuant to P.L.1943, c.160 (C. 43:10-18.1 et seq.), R.S.43:10-1 through R.S.43:10-18, P.L.1948, c.310 (C.43:10-18.50 et seq.), or P.L.1954, c.218 (C.43:13-22.3 et seq.), may enter into an insurance contract to fund the actuarial liability of its pension system, for a term which may not exceed the term of the actuarial liability covered by the contract.

3. This act shall take effect immediately.

Approved December 23, 1994.

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CHAPTER 186

AN ACT concerning planning board powers in certain municipalities and amending P.L.1975, c.291.

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

1. Section 16 of P.L.1975, c.291 (C.40:55D-25) is amended to read as follows:

**C.40:55D-25 Powers of planning board.**

16. a. The planning board shall follow the provisions of this act and shall accordingly exercise its power in regard to:

- (1) The master plan pursuant to article 3;
- (2) Subdivision control and site plan review pursuant to article 6;
- (3) The official map pursuant to article 5;
- (4) The zoning ordinance including conditional uses pursuant to article 8;
- (5) The capital improvement program pursuant to article 4;
- (6) Variances and certain building permits in conjunction with subdivision, site plan and conditional use approval pursuant to article 7.

b. The planning board may:

- (1) Participate in the preparation and review of programs or plans required by State or federal law or regulation;
- (2) Assemble data on a continuing basis as part of a continuous planning process; and
- (3) Perform such other advisory duties as are assigned to it by ordinance or resolution of the governing body for the aid and assistance of the governing body or other agencies or officers.

c. In a municipality having a population of 10,000 or less, a nine-member planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all the powers of a board of adjustment; but the Class I and the Class III members shall not participate in the consideration of applications for development which involve relief pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70).

d. In a municipality having a population of 2,500 or less, the planning board, if so provided by ordinance, shall exercise, to the same extent and subject to the same restrictions, all of the powers of an historic preservation commission, provided that at least one planning board member meets the qualifications of a Class A member of an historic preservation commission and at least one member meets the qualifications of a Class B member of that commission.

2. This act shall take effect immediately.

Approved December 23, 1994.

## CHAPTER 187

AN ACT concerning certain dogs, amending and supplementing P.L.1989, c.307, and repealing section 5 of P.L.1989, c.307.

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

1. Section 2 of P.L.1989, c.307 (C.4:19-18) is amended to read as follows:

**C.4:19-18 Definitions.**

2. As used in this act:

“Animal control officer” means a certified municipal animal control officer or, in the absence of such an officer, the chief law enforcement officer of the municipality or his designee.

“Department” means the Department of Health.

“Dog” means any dog or dog hybrid.

“Domestic animal” means any cat, dog, or livestock other than poultry.

“Potentially dangerous dog” means any dog or dog hybrid declared potentially dangerous by a municipal court pursuant to section 7 of P.L.1989, c.307 (C.4:19-23).

“Vicious dog” means any dog or dog hybrid declared vicious by a municipal court pursuant to section 6 of P.L.1989, c.307 (C.4:19-22).

2. Section 4 of P.L.1989, c.307 (C.4:19-20) is amended to read as follows:

**C.4:19-20 Notification of owner of dog; hearing.**

4. a. The animal control officer shall notify the municipal court and the municipal health officer immediately that he has seized and impounded a dog pursuant to section 3 of P.L.1989, c.307 (C.4:19-19), or that he has reasonable cause to believe that a dog has killed another domestic animal and that a hearing is required. The animal control officer shall through a reasonable effort attempt to determine the identity of the owner of any dog seized and impounded pursuant to section 3 of P.L.1989, c.307. If its owner cannot be identified within seven days, that dog may be humanely destroyed.

b. The animal control officer shall, within three working days of the determination of the identity of the owner of a dog seized and impounded pursuant to section 3 of P.L.1989, c.307 (C.4:19-19), notify by certified mail, return receipt requested, the owner

concerning the seizure and impoundment, and that, if the owner wishes, a hearing will be held to determine whether the impounded dog is vicious or potentially dangerous. This notice shall also require that the owner return within seven days, by certified mail or hand delivery, a signed statement indicating whether he wishes the hearing to be conducted or, if not, to relinquish ownership of the dog, in which case the dog may be humanely destroyed. If the owner cannot be notified by certified mail, return receipt requested, or refuses to sign for the certified letter, or does not reply to the certified letter with a signed statement within seven days of receipt, the dog may be humanely destroyed.

3. Section 6 of P.L.1989, c.307 (C.4:19-22) is amended to read as follows:

**C.4:19-22 Dog declared vicious by municipal court; conditions.**

6. a. The municipal court shall declare the dog vicious if it finds by clear and convincing evidence that the dog:

(1) killed a person or caused serious bodily injury as defined in N.J.S.2C:11-1(b) to a person; or

(2) has engaged in dog fighting activities as described in R.S.4:22-24 and R.S.4:22-26.

b. A dog shall not be declared vicious for inflicting death or serious bodily injury as defined in N.J.S.2C:11-1(b) upon a person if the dog was provoked. The municipality shall bear the burden of proof to demonstrate that the dog was not provoked.

c. If the municipal court declares a dog to be vicious, and no appeal is made of this ruling pursuant to section 9 of P.L.1989, c.307 (C.4:19-25), the dog shall be destroyed in a humane and expeditious manner, except that no dog may be destroyed during the pendency of an appeal.

4. Section 7 of P.L.1989, c.307 (C.4:19-23) is amended to read as follows:

**C.4:19-23 Dog declared potentially dangerous; conditions.**

7. a. The municipal court shall declare a dog to be potentially dangerous if it finds by clear and convincing evidence that the dog:

(1) caused bodily injury as defined in N.J.S.2C:11-1(a) to a person during an unprovoked attack, and poses a serious threat of bodily injury or death to a person, or

(2) killed another domestic animal, and

(a) poses a threat of serious bodily injury or death to a person; or



(b) poses a threat of death to another domestic animal, or  
(3) has been trained, tormented, badgered, baited or encouraged to engage in unprovoked attacks upon persons or domestic animals.

b. A dog shall not be declared potentially dangerous for:

(1) causing bodily injury as defined in N.J.S.2C:11-1(a) to a person if the dog was provoked, or

(2) killing a domestic animal if the domestic animal was the aggressor.

For the purposes of paragraph (1) of this subsection, the municipality shall bear the burden of proof to demonstrate that the dog was not provoked.

5. Section 8 of P.L.1989, c.307 (C.4:19-24) is amended to read as follows:

**C.4:19-24 Registration of potentially dangerous dog; conditions.**

8. If the municipal court declares the dog to be potentially dangerous, it shall issue an order and a schedule for compliance which, in part:

a. shall require the owner to comply with the following conditions:

(1) to apply, at his own expense, to the municipal clerk or other official designated to license dogs pursuant to section 2 of P.L.1941, c.151 (C.4:19-15.2), for a special municipal potentially dangerous dog license, municipal registration number, and red identification tag issued pursuant to section 14 of this act. The owner shall, at his own expense, have the registration number tattooed upon the dog in a prominent location. A potentially dangerous dog shall be impounded until the owner obtains a municipal potentially dangerous dog license, municipal registration number, and red identification tag;

(2) to display, in a conspicuous manner, a sign on his premises warning that a potentially dangerous dog is on the premises. The sign shall be visible and legible from 50 feet of the enclosure required pursuant to paragraph (3) of this subsection;

(3) to immediately erect and maintain an enclosure for the potentially dangerous dog on the property where the potentially dangerous dog will be kept and maintained, which has sound sides, top and bottom to prevent the potentially dangerous dog from escaping by climbing, jumping or digging and within a fence of at least six feet in height separated by at least three feet from the confined area. The owner of a potentially dangerous dog shall securely lock the enclosure to prevent the entry of the general public and to

preclude any release or escape of a potentially dangerous dog by an unknowing child or other person. All potentially dangerous dogs shall be confined in the enclosure or, if taken out of the enclosure, securely muzzled and restrained with a tether approved by the animal control officer and having a minimum tensile strength sufficiently in excess of that required to restrict the potentially dangerous dog's movements to a radius of no more than three feet from the owner and under the direct supervision of the owner;

b. may require the owner to maintain liability insurance in an amount determined by the municipal court to cover any damage or injury caused by the potentially dangerous dog. The liability insurance, which may be separate from any other homeowner policy, shall contain a provision requiring the municipality in which the owner resides to be named as an additional insured for the sole purpose of being notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy.

6. Section 9 of P.L.1989, c.307 (C.4:19-25) is amended to read as follows:

**C.4:19-25 Appeal of decision.**

9. The owner of the dog, or the animal control officer in the municipality in which the dog was impounded, may appeal any final decision, order, or judgment, including any conditions attached thereto, of a municipal court pursuant to P.L.1989, c.307 (C.4:19-17 et seq.) by filing an appeal with the Superior Court, Law Division, in accordance with the Rules Governing The Courts of the State of New Jersey pertaining to appeals from courts of limited jurisdiction. The Superior Court shall hear the appeal by conducting a hearing de novo in the manner established by those rules for appeals from courts of limited jurisdiction.

7. Section 10 of P.L.1989, c.307 (C.4:19-26) is amended to read as follows:

**C.4:19-26 Liability of owner for cost of impounding, destroying dog; rabies testing.**

10. a. If a dog is declared vicious or potentially dangerous, and all appeals pertaining thereto have been exhausted, the owner of the dog shall be liable to the municipality in which the dog is impounded for the costs and expenses of impounding and destroying the dog. The municipality may establish by ordinance a schedule of these costs and expenses. The owner shall incur the

expense of impounding the dog in a facility other than the municipal pound, regardless of whether the dog is ultimately found to be vicious or potentially dangerous.

b. If the dog has bitten or exposed a person within 10 days previous to the time of euthanasia, its head shall be transported to the New Jersey State Department of Health laboratory for rabies testing.

8. Section 11 of P.L.1989, c.307 (C.4:19-27) is amended to read as follows:

**C.4:19-27 Hearing on subsequent actions of dog.**

11. If the municipal court finds that the dog is not vicious or potentially dangerous, the municipal court shall retain the right to convene a hearing to determine whether the dog is vicious or potentially dangerous for any subsequent actions of the dog.

9. Section 12 of P.L.1989, c.307 (C.4:19-28) is amended to read as follows:

**C.4:19-28 Obligations of owner of potentially dangerous dog.**

12. The owner of a potentially dangerous dog shall:

a. comply with the provisions of P.L.1989, c.307 (C.4:19-17 et seq.) in accordance with a schedule established by the municipal court, but in no case more than 60 days subsequent to the date of determination;

b. notify the licensing authority, local police department or force, and the animal control officer if a potentially dangerous dog is at large, or has attacked a human being or killed a domestic animal;

c. notify the licensing authority, local police department or force, and the animal control officer within 24 hours of the death, sale or donation of a potentially dangerous dog;

d. prior to selling or donating the dog, inform the prospective owner that the dog has been declared potentially dangerous;

e. upon the sale or donation of the dog to a person residing in a different municipality, notify the department and the licensing authority, police department or force, and animal control officer of that municipality of the transfer of ownership and the name, address and telephone of the new owner; and

f. in addition to any license fee required pursuant to section 3 of P.L.1941, c.151 (C.4:19-15.3), pay a potentially dangerous dog license fee to the municipality as provided by section 15 of P.L.1989, c.307 (C.4:19-31).

10. Section 13 of P.L.1989, c.307 (C.4:19-29) is amended to read as follows:

**C.4:19-29 Violation by owner; fine, seizure, impoundment of dog.**

13. The owner of a potentially dangerous dog who is found by clear and convincing evidence to have violated this act, or any rule or regulation adopted pursuant thereto, or to have failed to comply with a court's order shall be subject to a fine of not more than \$1,000 per day of the violation, and each day's continuance of the violation shall constitute a separate and distinct violation. The municipal court shall have jurisdiction to enforce this section. An animal control officer is authorized to seize and impound any potentially dangerous dog whose owner fails to comply with the provisions of P.L.1989, c.307 (C.4:19-17 et seq.), or any rule or regulation adopted pursuant thereto, or a court's order. The municipal court may order that the dog so seized and impounded be destroyed in an expeditious and humane manner.

11. Section 14 of P.L.1989, c.307 (C.4:19-30) is amended to read as follows:

**C.4:19-30 Municipality to register, identify potentially dangerous dogs; publicize phone numbers to report violations.**

14. Each municipality shall:

a. issue a potentially dangerous dog registration number and red identification tag along with a municipal potentially dangerous dog license upon a demonstration of sufficient evidence by the owner to the animal control officer that he has complied with the court's orders. The last three digits of each potentially dangerous dog registration number issued by a municipality will be the three number code assigned to that municipality in the regulations promulgated pursuant to section 17 of P.L.1989, c.307 (C.4:19-33). The animal control officer shall verify, in writing, compliance to the municipal clerk or other official designated to license dogs in the municipality;

b. publicize a telephone number for reporting violations of this act. This telephone number shall be forwarded to the department and any changes in this number shall be reported immediately to the department.

**C.4:19-21.1 Settlement agreements, immunity of municipality.**

12. Notwithstanding any provision in P.L.1989, c.307 (C.4:19-17 et seq.) to the contrary, the municipality and the owner of the dog may settle and dispose of the matter at any time in such manner and according to such terms and conditions as may be mutually agreed upon. Notwithstanding any provision of P.L.1989, c.307 to

the contrary, no municipality or any of its employees shall have any liability by virtue of having entered into any settlement agreement pursuant to this section, or for any action or inaction related to the entry into such agreement, for any injuries or damages caused thereafter by the dog. The municipality may, as a condition of the settlement agreement, also require that the owner of the dog hold the municipality harmless for any legal expenses or fees the municipality may incur in defending against any cause of action brought against the municipality notwithstanding the prohibition against such causes of action set forth in this section.

**Repealer.**

13. Section 5 of P.L.1989, c.307 (C.4:19-21) is repealed.

14. This act shall not apply to any dog the forfeiture of which was remitted by an executive order.

15. This act shall take effect immediately and shall also apply retroactively to any prosecution brought pursuant to P.L.1989, c.307 (C.4:19-17 et seq.) pending in New Jersey courts as of the effective date of this act.

Approved December 23, 1994.

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CHAPTER 188

AN ACT concerning certain rating organizations and advisory organizations and amending P.L.1990, c.8, P.L.1970, c.73 and P.L.1944, c.27.

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

1. Section 69 of P.L.1990, c.8 (C.17:33B-31) is amended to read as follows:

**C.17:33B-31 Use of rating or advisory organization for collection, compilation and dissemination of historical data; factors for coverage; etc.**

69. Notwithstanding the provisions of Subtitle 3 of Title 17 of the Revised Statutes or any other provision of law to the contrary, no rating organization or advisory organization may be used by an insurer in rate-making for private passenger automobile insurance except as follows:

a. for the purposes of the collection, compilation and dissemination of historical data for two or more insurers. As used in this subsection, the "collection, compilation and dissemination of historical data" shall not be deemed to include the trending of loss data for claims;

b. to develop and disseminate model year, vehicle series, symbol programs and factors, for comprehensive and collision coverages;

c. to participate in any study of the auto insurance system in New Jersey; and

d. to develop and amend policy forms and endorsements and necessary related rules as determined by the commissioner.

No rating organization or advisory organization shall require or make an agreement to require the use of any data, policy forms, rule or endorsement by any insurer.

The provisions of this section shall not apply to the plan promulgated under subsection a. of section 1 of P.L.1970, c.215 (C.17:29D-1).

2. Section 5 of P.L.1970, c.73 (C.56:9-5) is amended to read as follows:

**C.56:9-5 Certain activities permitted.**

5. a. This act shall not forbid the existence of trade and professional organizations created for the purpose of mutual help, and not having capital stock, nor forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof not otherwise in violation of this act; nor shall those organizations or members per se be illegal combinations or conspiracies in restraint of trade under the provisions of this act.

b. No provisions of this act shall be construed to make illegal:

(1) The activities of any labor organization or of individual members thereof which are directed solely to labor objectives which are legitimate under the laws of either the State of New Jersey or the United States;

(2) The activities of any agricultural or horticultural cooperative organization, whether incorporated or unincorporated, or of individual members thereof, which are directed solely to objectives of such cooperative organizations which are legitimate under the laws of either the State of New Jersey or the United States;

(3) The activities of any public utility, as defined in R.S.48:2-13 to the extent that such activities are subject to the jurisdiction of the Board of Public Utilities, the Department of Transportation, the Federal Power Commission, the Federal

Communications Commission, the Federal Department of Transportation or the Interstate Commerce Commission;

(4) The activities, including, but not limited to, the making of or participating in joint underwriting or joint reinsurance arrangements, of any insurer, insurance agent, insurance broker, independent insurance adjuster or rating organization to the extent that such activities are subject to regulation by the Commissioner of Insurance of this State under, or are permitted, or are authorized by, the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) and the "Department of Insurance Act of 1970," P.L.1970, c.12 (C.17:1C-1 et seq.), provided, however, the provisions of this paragraph (4) shall not apply to private passenger automobile insurance business, except as provided in section 69 of P.L.1990, c.8 (C.17:33B-31);

(5) The bona fide religious and charitable activities of any not for profit corporation, trust or organization established exclusively for religious or charitable purposes, or for both purposes;

(6) The activities engaged in by securities dealers, issuers or agents who are (i) licensed by the State of New Jersey under the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.), or (ii) members of the National Association of Securities Dealers, or (iii) members of any National Securities Exchange registered with the Securities and Exchange Commission under the "Securities Exchange Act of 1934," as amended, in the course of their business of offering, selling, buying and selling, or otherwise trading in or underwriting securities, as agent, broker, or principal, and activities of any National Securities Exchange so registered, including the establishment of commission rates and schedules of charges;

(7) The activities of any State or national banking institution to the extent that such activities are regulated or supervised by officers of the State government under the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under the banking laws of the United States;

(8) The activities of any state or federal savings and loan association to the extent that such activities are regulated or supervised by officers of the State government under the "Department of Banking and Insurance Act of 1948," P.L.1948, c.88 (C.17:1-1.1 et al.) or P.L.1970, c.11 (C.17:1B-1 et seq.), or the federal government under the banking laws of the United States;

(9) The activities of any bona fide not for profit professional association, society or board, licensed and regulated by the courts

or any other agency of this State, in recommending schedules of suggested fees, rates or commissions for use solely as guidelines in determining charges for professional and technical services; or

(10) The activities permitted under the provisions of chapter 4 of Title 56 of the Revised Statutes, "An act to regulate the retail sale of motor fuels," P.L.1938, c.163 (C.56:6-1 et seq.), the "Unfair Motor Fuels Practices Act," P.L.1953, c.413 (C.56:6-19 et seq.) and the "Unfair Cigarette Sales Act of 1952," P.L.1952, c.247 (C.56:7-18 et seq.).

c. This act shall not apply to any activity directed, authorized or permitted by any law of this State that is in conflict or inconsistent with the provisions of this act, and the enactment of this act shall not be deemed to repeal, either expressly or by implication, any such other law in effect on the date of its enactment.

3. Section 1 of P.L.1944, c.27 (C.17:29A-1) is amended to read as follows:

**C.17:29A-1 Definitions.**

1. As used in this act,

(a) "Rate" means the unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or covered thereunder is multiplied to determine the premium.

(b) "Premium" means the consideration paid or to be paid to an insurer for the issuance and delivery of any binder or policy of insurance.

(c) "Rate-making" means the examination and analysis of factors and influences related to and bearing upon the hazard and risk made the subject of insurance; the collection and collation of such factors and influences into rating-systems; and the application of such rating-systems to individual risks.

(d) "Rating-system" means every schedule, class, classification, rule, guide, standard, manual, table, rating plan, or compilation, by whatever name described, containing the rates used by any rating organization or by any insurer, or used by any insurer or by any rating organization in determining or ascertaining a rate and includes any policy form, or part thereof, used therewith.

(e) "Policy of insurance," without otherwise limiting its meaning, shall include guaranty and surety bonds.

(f) "Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of rate-making for two or more insurers.



(g) "Insurer" means any person or persons, corporation, association, partnership or company authorized by the laws of this State to transact the business of insurance in this State.

(h) "Commissioner" means the Commissioner of Insurance of New Jersey.

(i) "Risk," as the context may require, means, (1) as to fire insurance or any other kind of insurance which, by law, may be embraced in a policy of fire insurance, as part thereof or as supplemental thereto, any property, real or personal, described in a policy, exposed to any hazard or peril named in such policy; and (2) as to all other kinds of insurance not specifically included in subsection (i)(1) of this section, the hazard or peril named in a policy of insurance.

(j) "Filer" means a rating organization or any insurer making its own rates.

(k) "Commission" means the commission paid by the insurer to the producer or, for those insurers whose sales compensation, as reported on the insurer's expense exhibits, is not classified as a commission, such compensation shall be treated as a commission.

4. This act shall take effect immediately.

Approved December 23, 1994.

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## CHAPTER 189

AN ACT concerning the transfer of domicile of certain insurers.

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

**C.17:17-20 Change of domicile for insurers.**

1. a. An insurer that is formed under the laws of another state and is admitted to transact the business of insurance in this State may become a domestic insurer upon the commissioner's determination that the company has complied with all applicable requirements of Title 17 of the Revised Statutes relating to the formation of a domestic insurer of the same type. If the commissioner approves the domestication of a foreign insurer pursuant to this section, the insurer shall be entitled to a certificate of authority equivalent to that which was previously held as a foreign insurer and the insurer shall be subject to the authority and jurisdiction of this State. The newly domesticated insurer shall amend its articles

of incorporation to provide that the corporation is a continuation of the corporate existence of the original foreign corporation through the adoption of this State as its corporate domicile, and that the original date of incorporation in its original domiciliary state is the date of incorporation of such domestic insurer. For purposes of the premium tax laws, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), however, the date of licensure shall be the date on which the commissioner approves the domestication in this State.

b. Any domestic insurer may, upon the written approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance. The company shall cease to be a domestic insurer as of the effective date of the transfer approved by the commissioner. Such a company shall be admitted to transact the business of insurance in this State if the company is otherwise qualified as a foreign insurer pursuant to the applicable requirements of Title 17 of the Revised Statutes.

c. Every insurer authorized to transact business in the State shall notify the commissioner of the details of any proposed transfer of domicile at least 60 days prior to the effective date of the proposed transfer, however, the commissioner may approve a shorter period for providing such notice. Such an insurer shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

d. Prior to granting approval for any foreign insurer to become a domestic insurer, or for a domestic insurer to transfer its domicile to another state, the commissioner may conduct whatever investigations, examinations or hearings he deems necessary, and may subject the issuance of his approval to the conditions and restrictions that he determines are reasonable and necessary for the protection of the company's policyholders or the public.

e. The transfer of domicile of an insurer pursuant to the provisions of this section shall not be construed to alter either the existing rights, franchises and interests, or the duties, obligations and liabilities of the insurer transferring domicile, except as otherwise provided by law. Insurers who transfer domicile shall continue to be subject to all the liabilities, claims and demands against the company which were in existence prior to the transfer of domicile. Any action or proceeding pending at the time of the consummation of the process by which the domicile is transferred in which the company is a party shall not abate or discontinue by reason of the transfer of domicile, but shall be prosecuted to a final resolution in the same manner as if the transfer of domicile had not taken place.

f. The certificate of authority, insurance producer appointments and licenses, rating systems and other documents required to be maintained for regulatory purposes, which are in existence and approved for use in this State at the time any insurer licensed to transact the business of insurance in this State transfers its corporate domicile to this or any other state by merger, consolidation, transfer, or any other lawful method, shall continue in full force and effect upon such transfer if the commissioner is satisfied that the insurer remains duly qualified to transact the business of insurance in this State. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. To the extent required by law, every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner.

**C.17B:17-12.1 Change of domicile for insurers.**

2. a. An insurer that is formed under the laws of another state and is admitted to transact the business of insurance in this State may become a domestic insurer upon the commissioner's determination that the company has complied with all applicable requirements of Title 17B of the New Jersey Statutes relating to the formation of a domestic insurer of the same type. If the commissioner approves the domestication of a foreign insurer pursuant to this section, the insurer shall be entitled to a certificate of authority equivalent to that which was previously held as a foreign insurer and the insurer shall be subject to the authority and jurisdiction of this State. The newly domesticated insurer shall amend its articles of incorporation to provide that the corporation is a continuation of the corporate existence of the original foreign corporation through the adoption of this State as its corporate domicile, and that the original date of incorporation in its original domiciliary state is the date of incorporation of such domestic insurer. For purposes of the premium tax laws, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), however, the date of licensure shall be the date on which the commissioner approves the domestication in this State.

b. Any domestic insurer may, upon the written approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact the business of insurance. The company shall cease to be a domestic insurer as of the effective date of the trans-

fer approved by the commissioner. Such a company shall be admitted to transact the business of insurance in this State if the company is otherwise qualified as a foreign insurer pursuant to the applicable requirements of Title 17B of the New Jersey Statutes.

c. Every insurer authorized to transact business in the State shall notify the commissioner of the details of any proposed transfer of domicile at least 60 days prior to the effective date of the proposed transfer, however, the commissioner may approve a shorter period for providing such notice. Such an insurer shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

d. Prior to granting approval for any foreign insurer to become a domestic insurer, or for a domestic insurer to transfer its domicile to another state, the commissioner may conduct whatever investigations, examinations or hearings he deems necessary, and may subject the issuance of his approval to the conditions and restrictions that he determines are reasonable and necessary for the protection of the company's policyholders or the public.

e. The transfer of domicile of an insurer pursuant to the provisions of this section shall not be construed to alter either the existing rights, franchises and interests, or the duties, obligations and liabilities of the insurer transferring domicile, except as otherwise provided by law. Insurers who transfer domicile shall continue to be subject to all the liabilities, claims and demands against the company which were in existence prior to the transfer of domicile. Any action or proceeding pending at the time of the consummation of the process by which the domicile is transferred in which the company is a party shall not abate or discontinue by reason of the transfer of domicile, but shall be prosecuted to a final resolution in the same manner as if the transfer of domicile had not taken place.

f. The certificate of authority, insurance producer appointments and licenses, rating systems and other documents required to be maintained for regulatory purposes, which are in existence and approved for use in this State at the time any insurer licensed to transact the business of insurance in this State transfers its corporate domicile to this or any other state by merger, consolidation, transfer, or any other lawful method, shall continue in full force and effect upon such transfer if the commissioner is satisfied that the insurer remains duly qualified to transact the business of insurance in this State. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by

the commissioner. To the extent required by law, every transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the commissioner.

3. This act shall take effect immediately.

Approved December 23, 1994.

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## CHAPTER 190

AN ACT establishing standards for certain motor vehicle leases, amending R.S.39:10-19 and R.S.39:10-20, supplementing P.L.1960, c.39 (C.56:8-1 et seq.), and repealing P.L.1993, c.328 (C.56:12-50 et seq.).

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

**C.56:12-60 Short title.**

1. Sections 1 through 8 and sections 11 through 14 of this act shall be known and may be cited as the "Consumer Protection Leasing Act."

**C.56:12-61 Definitions.**

2. As used in sections 1 through 8 and sections 11 through 14 of this act:

"Adjusted capitalized cost" means the agreed upon amount which serves as the basis for determining the periodic lease payment and a portion of the lessee's early termination liability, computed by subtracting from the gross capitalized cost any capitalized cost reduction.

"Business day" means every day other than a Saturday, a Sunday, or a day on which State-chartered banks in New Jersey are required to be closed.

"Capitalized cost reduction" means any payment made by cash, check, rebates or similar means that are in the nature of down payments made by the lessee and any net trade-in allowance granted by the lessor at the inception of the lease for the purpose of reducing the gross capitalized cost but does not include any periodic

lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the 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.

“Fleet lease” means a contract or other agreement between a lessor and a lessee entered into after the effective date of this act and in which the vehicles are to be used primarily for business or commercial purposes that is either: a written agreement for the use of at least two vehicles that includes an agreement for an option to use at least one additional motor vehicle; or a written agreement for the lease of five or more vehicles.

“Gross capitalized cost” means the amount, which, when reduced by the amount of the capitalized cost reduction, equals the adjusted capitalized cost. The gross capitalized cost shall include, the cost of the vehicle and, without limitation, taxes, registration, license, acquisition, assignment and other fees and charges for insurance, for a waiver of the contractual obligation to pay certain liability in the event the motor vehicle is damaged, stolen or otherwise lost, for accessories and their installation, for delivering, serving, repairing or improving the motor vehicle and for other services and benefits incidental to the lease. It may also include, with respect to a vehicle or other property traded-in in connection with a lease, the unpaid balance of any amount financed under an outstanding vehicle loan agreement or vehicle retail installment contract or the unpaid portion of the early termination obligation under any other obligation of the lessee.

“Lease” means a contract or other agreement between a lessor and a lessee, other than a fleet lease, entered into after the effective date of this act for the use of a motor vehicle by the lessee for a period of time exceeding 120 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. A lease shall not be deemed to be a retail installment contract, as defined in subsection (b) of section 1 of P.L.1960, c.40 (C.17:16C-1), unless the lessee, for no or for a nominal consideration, becomes the owner, or has the option of becoming the owner, of the motor vehicle at the end of the term of the lease.

“Leasing dealer” means a person who, in the ordinary course of business, offers or enters into motor vehicle leases or who in the course of any 12-month period offers or enters into more than

three motor vehicle leases. The term "leasing dealer" shall not include a person to whom a lease is assigned by a leasing dealer.

"Lessee" means a person who leases a motor vehicle under a lease.

"Lessor" means a leasing dealer who holds title to a motor vehicle leased to a lessee under a lease or a leasing dealer who holds the lessor's rights under the lease or a person to whom a lease is assigned.

"Motor vehicle" or "vehicle" means a motor vehicle as defined in R.S.39:1-1, except the living facilities of motor homes.

"Purchase option price" means total cost to the lessee, excluding sales tax, to purchase the motor vehicle at the end of the lease term.

"Residual value" means the projected fair market value of the motor vehicle at the end of the lease term.

**C.56:12-62 Lease requirements.**

**3. Every lease:**

a. Shall be in writing and contain all of the terms and conditions of the lease agreement between the lessor and the lessee and shall be signed by the lessor and lessee;

b. Shall state the names and addresses of all parties, and the phone number of the leasing dealer. If the dealer knows the identity of the party to whom the leasing dealer intends to assign the lease, the dealer shall include in the lease the name, address and telephone number of the assignee. If the leasing dealer does not include the name, address and telephone number of the assignee in the lease, the dealer or the assignee shall, promptly upon assignment, mail or personally deliver to the lessee the name, address and telephone number of the assignee;

c. Shall state the dates when the lease is executed by the parties;

d. Shall identify the lease with the term "lease" in 14-point bold type and shall be in a style and format to be determined by the director by regulation;

e. Shall be completed in full without any blank spaces to be filled in after the lease 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 at the end of the lease term, and if so, either:

(a) the purchase option price, or

(b) the method for ascertaining the purchase option price. If the lease includes a method for determining the purchase option price, and that method is based upon an amount set forth in a publication, the identity of the publication and the classification contained within the publication to be used, shall be included. If the publication ceases to exist, the lessor shall immediately notify the lessee of that fact and inform the lessee of the identity of the comparable publication which will be utilized to ascertain the purchase option price. If a method for ascertaining the purchase option price not set forth in a publication is included in the lease, the lease shall set forth a good faith estimate of the amount, using that method;

(2) The total amount of all payments required at the inception of the lease term, including any refundable security deposit, any trade-in allowance and 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) A description of the standards to be used by the lessor in determining excessive wear or damage, and any liability the lease imposes upon the lessee at the end of the term of the lease, including any liability which may be imposed upon the lessee because of excessive wear or damage of the motor vehicle and any disposition costs imposed upon the lessee;

(5) (a) If the lease contains a purchase option, the total cost of the lease, assuming there is no default and that the lessee exercises the purchase option at the end of the term of the lease, which shall be the sum of: (i) the total amount of all payments required at the beginning of the lease; (ii) the total amount to be paid in periodic payments during the term of the lease; (iii) the amount of any liability the lease imposes upon the lessee at the end of the term of the lease; and (iv) the purchase option price.

(b) If the lease does not contain a purchase option or if the purchase option price is not set forth in the lease, the total fixed cost of the lease, which shall be the sum of (i), (ii) and (iii) of subparagraph (a) of this paragraph.

(c) For purposes of calculating the total cost of the lease under subparagraph (a) of this paragraph or the total fixed cost of the lease under subparagraph (b) of this paragraph, the amount of the refundable security deposit and insurance shall be excluded;



(6) The formula which shall be used by the lessor to calculate the total liability of the lessee if the lease is terminated by the lessee;

(7) The residual value of the vehicle;

(8) The total number of miles or the number of miles per month or year which the vehicle may be driven without additional charge 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. In the event the motor vehicle is damaged, stolen or lost and is deemed a total loss by the insurance company, and the lease contains a provision whereby the difference between the insurance proceeds and the amount due under the terms of the lease shall be waived if the lessor receives the insurance proceeds and if the lessee has otherwise complied with all other promises contained in the lease (including, where applicable, the requirement that the lessee pay the deductible under any insurance coverage), the lease shall disclose that the lessee shall have no further liability. Otherwise, the lease shall disclose the option on the part of the lessee to purchase from the lessor or from a third party, either insurance or damage waivers, if available, to indemnify him for the difference between the insurance proceeds and the amount due under the terms of the lease;

(10) The gross capitalized cost of the vehicle, the capitalized cost reduction and the adjusted capitalized cost when the cost of the vehicle for the purpose of calculating the gross capitalized cost exceeds the manufacturer's suggested retail price; and

h. Shall provide the following information concerning the motor vehicle to be leased:

(1) If the odometer reads in excess of 1,000 miles, an explanation of the prior use of the motor vehicle using the following terms, as applicable: personal, family or household, demonstrator, livery, daily rental, police, prior wreckage, unknown; provided that the lessor may insert "unknown" only if the lessor does not know the prior use of the motor vehicle;

(2) The odometer reading at the beginning of the lease term;

(3) The make, model, and year;

(4) The number of engine cylinders;

(5) Whether the transmission is automatic or manual;

(6) Whether the brakes and steering mechanism are power assisted or manual;

(7) Whether or not the vehicle is air conditioned;

(8) The vehicle identification number of the vehicle; and

(9) If the vehicle is required to have a Monroney label, the manufacturer's suggested retail price as set forth on the Monroney label.

**C.56:12-63 Disclosures, addendum.**

4. The disclosures required by subsections g. and h. of section 3 of this act may be made in the lease or in an addendum to the lease. If the required disclosures are made in an addendum to the lease, the addendum shall refer to the lease, and shall be separately signed by the lessee prior to signing the lease.

**C.56:12-64 Compliance with federal requirements as disclosure.**

5. Compliance with the requirements of the federal "Consumer Leasing Act of 1976," Pub. L. 94-240 (15 U.S.C. §1667 et seq.) and Federal Reserve Board Regulation M, 12 CFR §213, to the extent that they are substantially similar to the requirements of this act, as the same may be amended from time to time, shall constitute compliance with subsections f. and g. of section 3 of this act.

**C.56:12-65 Default; death of lessee.**

6. a. If a lessee is 15 days or more in default of the periodic payments due on the lease and the lessor wishes to declare a default and cancel or terminate the lease, the lessor shall personally deliver to the lessee or send by first class, certified mail at the lessee's last known address as shown on the records of the lessor, a notice of cancellation. A lessee who is in default under a lease solely for failure to make a payment required by the lease shall have the right to reinstate the lease, subject to the provisions of this section. If the lessee has the right to reinstate the lease, the notice of cancellation shall provide that the lessee has 15 days to reinstate the lease by paying all past due periodic payments, late fees and other amounts due under the lease, and, if the motor vehicle has been repossessed, the cost to the lessor of repossessing, storing and transporting the motor vehicle. Such costs may include a reasonable attorney's fee and court costs, if actually incurred by the lessor and if provided for in the lease. Upon payment within the 15-day period to the lessor of the amounts due, the lessor shall reinstate the lease as if the lessee had not been in default of payment. The lessor shall not be required to reinstate a lease more than once during the term of the lease. The lessee has no right to reinstatement if the default is for any reason other than or in addition to the failure to make a payment required by the lease.

b. In the event of the death of a lessee before the expiration of a lease, there shall be no default if the lessee's surviving spouse

continues to make payments to the lessor in accordance with the terms of the lease notwithstanding the death of the lessee.

**C.56:12-66 Appraisal for repair or replacement of parts, or reduced value.**

7. a. Where the lessee is liable at the end of the lease term for charges for excessive wear and damage to the motor vehicle, the lease (or the addendum) shall contain a statement that the lessee may obtain at the end of the lease term, at the lessee's expense, a professional appraisal of the amount required to repair or replace parts or the amount which the excessive wear and damage reduces the value of the vehicle. This professional appraisal shall be performed by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

b. Within 10 business days of the return of the motor vehicle to the lessor, the lessor shall mail or deliver to the lessee an invoice for amounts claimed by the lessor for excess wear and damage. The invoice shall contain in 10 point bold face type a notice of the lessee's right under subsection a. of this section to obtain an independent appraisal of excess wear and damage. The notice shall also provide that: (i) the lessor must be advised in writing within seven business days following the earlier of the date of the mailing or delivery of the invoice if the lessee elects to obtain an independent appraisal; (ii) any such appraisal must be conducted within ten business days following the date that the lessor is notified of the lessee's election; and (iii) that if the lessee fails to notify the lessor within the time allotted that the lessee has elected an independent appraisal, the lessor's invoice will be deemed to be final and binding on the parties.

c. Within 15 business days after the lessee's obligations under the lease have been determined and satisfied, which shall include but not be limited to, the lessee's liability for excess wear and damage under this section, the lessor shall credit to the lessee's account or mail to the lessee any refund of any security deposit due to the lessee.

d. Nothing in this section shall limit the lessee's obligation for any charge for excess mileage as provided in the lease.

**C.56:12-67 Credit check on lessee; right to review contract.**

8. a. No leasing dealer may permit a prospective lessee to take possession of a motor vehicle subject to a lease if such lease is contingent upon the approval of the lessee's credit unless the lessee is provided with, and acknowledges receipt of a notice on a separate page from any other notice, term or condition of the lease, which provides substantially the following: NOTICE:

**YOUR LEASE IS SUBJECT TO CREDIT APPROVAL. IF YOUR CREDIT IS NOT APPROVED YOU MUST RETURN THE VEHICLE.** The notice may contain the name, address, phone number and logo of the leasing dealer, and shall contain an acknowledgement by the lessee of the receipt of the notice.

b. (1) No lease shall bind a lessee or lessor unless both the lessee and lessor have had one business day to review the lease contract before the signing of the contract.

(2) No leasing dealer may permit a prospective lessee to take possession of a motor vehicle subject to a lease unless the lessee is provided with a conspicuous notice which provides substantially the following: **NOTICE: THE LESSEE AND THE LESSOR SHALL BE ENTITLED TO REVIEW THE CONTRACT FOR ONE BUSINESS DAY BEFORE SIGNING THE CONTRACT IMMEDIATELY ADJACENT TO THE SIGNATURE LINE OF THE CONTRACT.**

c. The leasing dealer shall complete the credit check of the prospective lessee within 5 business days of both the leasing dealer and lessee signing the lease.

9. R.S.39:10-19 is amended to read as follows:

**Dealer's license; eligibility, term, fee.**

39:10-19. No person shall engage in the business of buying, selling or dealing in motor vehicles in this State, nor shall a person engage in activity that would qualify the person as a leasing dealer, as defined in section 2 of P.L.1994, c.190 (C.56:12-61), unless: a. he is a licensed real estate broker acting as an agent or broker in the sale of mobile homes without their own motor power other than recreation vehicles as defined in section 3 of P.L.1990, c.103 (C.39:3-10.11), or manufactured homes as defined in section 3 of P.L.1983, c.400 (C.54:4-1.4); or b. he is authorized to do so under the provisions of this chapter. The director may, upon application in such form as he prescribes, license any proper person as such dealer or leasing dealer. A licensed real estate broker shall be entitled to act as an agent or broker in the sale of a mobile or manufactured home as defined in subsection a. of this section without obtaining a license from the director. For the purposes of this chapter, a "licensed real estate broker" means a real estate broker licensed by the New Jersey Real Estate Commission pursuant to the provisions of chapter 15 of Title 45 of the Revised Statutes. Any sale or transfer of a mobile or manufactured home, in which a licensed real estate broker acts as a

broker or agent pursuant to this section, which sale or transfer is subject to any other requirements of R.S.39:10-1 et seq., shall comply with all of those requirements. No person who has been convicted of a crime, arising out of fraud or misrepresentation in the sale, leasing or financing of a motor vehicle, shall be eligible to receive a license. Each applicant for a license shall at the time such license is issued have established and maintained, or by said application shall agree to establish and maintain, within 90 days after the issuance thereof, a place of business consisting of a permanent building not less than 1,000 square feet in floor space located in the State of New Jersey to be used principally for the servicing and display of motor vehicles with such equipment installed therein as shall be requisite for the servicing of motor vehicles in such manner as to make them comply with the laws of this State and with any rules and regulations made by the director of motor vehicles governing the equipment, use and operation of motor vehicles within the State. However, a leasing dealer, who is not engaged in the business of buying, selling or dealing in motor vehicles in the State, shall not be required to maintain a place of business with floor space available for the servicing or display of motor vehicles or to have an exterior sign at the lessor's place of business. A license fee of \$100 shall be paid by an applicant upon his initial application for a license. The director may renew an applicant's license from year to year, upon application for renewal on a form prescribed by the director and accompanied each year by a renewal fee of \$100. Every license shall expire on March 31 of each year terminating the period for which it is issued. On and after February 1 of each year the director shall issue licenses for the following yearly period to expire on March 31 of the following year.

For the purposes of this section, a leasing dealer or an assignee of a leasing dealer whose leasing activities are limited to buying motor vehicles for the purpose of leasing them and selling motor vehicles at the termination of a lease shall not be deemed to be engaged in the business of buying, selling or dealing in motor vehicles in this State.

10. R.S.39:10-20 is amended to read as follows:

**Suspension, revocation of license.**

39:10-20. The director may suspend for a period less than the unexpired term of a license or revoke a license, after hearing, for a violation of any provision of this chapter or upon the final conviction of the licensee of a crime, arising out of fraud or

misrepresentation in the sale, leasing or financing of a motor vehicle, or upon proof of the failure of a licensee to make payment of the amount of any final judgment, rendered by a court of competent jurisdiction against such licensee and founded upon a claim arising out of fraud or misrepresentation in the sale or leasing of a motor vehicle, within 90 days after the same is finally entered, or for final conviction of the licensee for violating any provision of chapter 171 of Title 2A or of any supplement thereof (Observance of Sabbath Days). The clerk of the court in which any conviction is rendered, or the court where it has no clerk, shall forward to the director, immediately upon the entry thereof, a certified copy of the conviction or a transcript thereof. The clerk of the court in which any judgment founded upon fraud or misrepresentation is rendered, or the court where it has no clerk, shall forward to the director, immediately after the expiration of the 90 days, a certified copy of the judgment, or a transcript thereof, showing it to have been unsatisfied more than 90 days after it became final. The director shall, before suspending or revoking the license, and at least 10 days prior to the date set for the hearing, notify the holder of the license, in writing, of any charges made, and shall afford him an opportunity to be heard in person or by counsel. The written notice may be served either personally or by registered mail addressed to the last-known address of the licensee. The director may subpoena and bring before him any person in this State, or take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this State, and shall also issue and deliver to the dealer such subpoenas as are requested by him. The Appellate Division of the Superior Court shall have power to review, by an appeal in lieu of prerogative writ taken by an aggrieved person, a final determination of the director.

**C.56:12-68 Consumer awareness program.**

11. The director shall implement a consumer awareness program which shall advise consumers of the requirements, protections and benefits provided by this act.

**C.56:12-69 Rules and regulations.**

12. 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.

**Repealer.**

13. P.L.1993, c.328 (C.56:12-50 et seq.) is repealed.

**C.56:12-70 Violations as unlawful practices.**

14. 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.

15. This act shall take effect on the 180th day following enactment, except that sections 12 and 13 of this act shall take effect immediately.

Approved December 23, 1994.

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**CHAPTER 191**

**AN ACT** concerning the State Commission of Investigation and amending P.L.1968, c.266 and repealing section 8 of P.L.1979, c.254 (C.52:9M-19).

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

1. Within 60 days after the enactment of this act, a special committee shall be established to review the activities of the State Commission of Investigation for the purpose of determining whether the statutory authorization for the commission's operation should be renewed. The special committee shall consist of seven members: three members to be appointed by the Governor, no more than two of whom shall be of the same political party; two members to be appointed by the President of the Senate, no more than one of whom shall be of the same political party and two members to be appointed by the Speaker of the General Assembly, no more than one of whom shall be of the same political party. This committee shall submit its report to the Governor and the Legislature no later than March 1, 1996.

**Repealer.**

2. Section 8 of P.L.1979, c.254 (C.52:9M-19) is repealed.

3. Section 20 of P.L.1968, c.266 is amended to read as follows:

20. This act shall take effect immediately and remain in effect until July 1, 1996.

4. This act shall take effect immediately.

Approved December 29, 1994.





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## JOINT RESOLUTIONS

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(1379)



## **Joint Resolutions**

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### **JOINT RESOLUTION No. 1**

**A JOINT RESOLUTION designating P.L.1994, c.13, the statute requiring school boards to include instruction on the Holocaust in the curriculum, as the "Matthew Feldman Act."**

**WHEREAS, Matthew Feldman, who brought wit, integrity and creative leadership to a distinguished public career in State and local government, died on Monday, April 11, 1994; and**

**WHEREAS, Mr. Feldman, known affectionately as "Matty," was born in Jersey City on March 22, 1919, and attended the University of North Carolina and Panzer College, now part of Montclair State College; and**

**WHEREAS, Matty was a captain in the Army Air Corps during World War II, gaining renown as a successful middleweight boxer, and later served as State Commander of Jewish War Veterans; and**

**WHEREAS, As Mayor of Teaneck, Matty was instrumental in achieving racial and political harmony during the integration of the city's schools and neighborhoods; and**

**WHEREAS, Elected to the Senate in 1965 and returned in 1973, Matty served in that House for over 20 years in various leadership positions, including two years as Senate President, and sponsored a wide array of major legislative initiatives; and**

**WHEREAS, As longtime chairman of the Senate Education Committee, Matty was a compassionate and effective educator who placed the interests of New Jersey's school children first in every legislative debate; and**

**WHEREAS, In one of his final public appearances, Matty traveled to Trenton on April 7 to witness the signing of P.L.1994, c.13, a bill requiring school boards to include instruction on the Holocaust and genocides in the curriculum of all school pupils; and**

WHEREAS, It is altogether fitting and proper that the Holocaust education statute bear the name of a legislator who resolutely opposed racial and ethnic discrimination throughout his life; now, therefore,

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

1. P.L.1994, c.13, which was approved on April 7, 1994, and which requires every school board to provide instruction on the Holocaust and genocide for elementary and secondary school pupils, shall be known and may be cited as the "Matthew Feldman Act."

2. This joint resolution shall take effect immediately.

Approved August 2, 1994.

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#### JOINT RESOLUTION No. 2

A JOINT RESOLUTION designating the month of October, 1994 as "Domestic Violence Awareness Month."

WHEREAS, The Legislature enacted the "Prevention of Domestic Violence Act of 1990," in an effort to comprehensively address the serious crime of domestic violence by requiring immediate response from law enforcement personnel when domestic violence is suspected and mandating training for judges, court personnel and law enforcement personnel; and

WHEREAS, The Advisory Council on Women recommended legislation which would educate the public and assure victims of domestic violence that the law will protect them from continued abuse; and

WHEREAS, In 1993, 66,000 cases of domestic violence cases were reported, a 27% increase over 1992, demonstrating a growing awareness by the public that domestic violence will not be tolerated and that avenues exist for resolution and justice; and

WHEREAS, 1993 domestic violence statistics show that 50% of all domestic violence incidents took place in the presence of children, the Legislature recognizes that women are not the only victims of domestic violence; and

WHEREAS, The Legislature recently enacted a significant package of domestic violence reform legislation, chapters 91, 93 and 94 of Public Laws of 1994, expanding the laws to protect minors, protect individuals in a dating relationship, require the seizure of weapons from violators and to save lives; and

WHEREAS, The Legislature will continue to work with State, local and county law enforcement officials, victims, and domestic violence reform advocates to educate the public and to reform existing laws to assure the safety and protection of these women and children; and

WHEREAS, The increased media attention surrounding domestic violence following the O.J. Simpson case and the recent hearings conducted by the Legislature reflect the public's heightened awareness; and

WHEREAS, It is in the public interest of this State to designate October, 1994, as "Domestic Violence Awareness Month" to acknowledge the courage of all women who speak out against domestic violence and to encourage them to seek justice through the new legal protections provided for them in the recent enactments; now, therefore,

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

1. The month of October, 1994 is designated as "Domestic Violence Awareness Month" in the State of New Jersey to acknowledge the courage of all women who speak out against domestic violence and to encourage others to do the same by assuring these women that they are not alone.

2. The Governor and the Legislature, by appropriate proclamation, shall proclaim October, 1994, as "Domestic Violence Awareness Month."

3. The Governor shall call upon the appropriate agencies of State and local government and private organizations to acknowledge and commemorate "Domestic Violence Awareness Month" in an appropriate fashion.

4. This joint resolution shall take effect immediately.

Approved November 1, 1994.

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JOINT RESOLUTION No. 3

A JOINT RESOLUTION designating the bridge spanning Broad Thorofare channel in the township of Egg Harbor, county of Atlantic as the "Dolores G. Cooper Bridge."

WHEREAS, The Honorable Dolores G. Cooper is a well-beloved person with a long and distinguished career in New Jersey government; and

WHEREAS, Mrs. Cooper was a member of the Atlantic County Charter Study Commission to which she was elected in 1973 and served as its Vice Chairwoman and historian; and

WHEREAS, She was elected a member of the Atlantic County Board of Chosen Freeholders in 1979 and re-elected in 1981; and

WHEREAS, Mrs. Cooper was elected to the General Assembly of this State for the first time in 1982, and re-elected four times, and as a member of the General Assembly served as the Assistant Majority Whip from 1986 to 1989; and

WHEREAS, Assemblywoman Cooper has taken a leadership role in a wide range of civic and charitable programs in the Atlantic City area, and has received more than 300 civic, cultural, and other awards; and

WHEREAS, It is most fitting and proper that the bridge spanning Broad Thorofare channel be designated in honor of the Honorable Dolores G. Cooper and in recognition of her life of

devoted public service to Atlantic County and the people of this State; now, therefore,

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

1. The Commissioner of Transportation shall designate the bridge spanning Broad Thorofare channel in the township of Egg Harbor, county of Atlantic as the "Dolores G. Cooper Bridge."

2. The Commissioner of Transportation is authorized to erect appropriate signs bearing this name.

3. This joint resolution shall take effect immediately.

Approved November 11, 1994.





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## EXECUTIVE ORDERS

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(1387)



## EXECUTIVE ORDER No. 1

**WHEREAS, A strong, sound economy is essential to the well being and prosperity of the State of New Jersey; and**

**WHEREAS, State government has a responsibility to improve and maintain the State's economy; and**

**WHEREAS, A strategic and comprehensive economic master plan will assist State government in removing unnecessary barriers to economic growth and in efficiently allocating its finite resources toward projects with the most economic benefit for the State; and**

**WHEREAS, An Economic Master Plan Commission should be formed to create a Strategic Economic Master Plan for the State of New Jersey;**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 New Jersey Economic Master Plan Commission, hereinafter referred to as the Commission.**

**2. The Commission shall consist of a chairperson and twelve (12) members appointed by the Governor, including the Secretary of State, and the Commissioners of the Departments of Commerce and Labor. The Commission shall also include representatives of the various sectors of the economy and geographic areas of New Jersey.**

**3. The Commission shall study economic conditions, together with existing statutes and regulations, which impact on the State's economic growth and prosperity. The Commission shall develop long- and short-range strategic recommendations for improving economic growth and prosperity in the form of a Strategic Economic Master Plan.**

**4. The Commission shall periodically report to the Governor and shall issue the Strategic Economic Master Plan by October 1, 1994.**

5. The Commission is authorized to call upon any department, office, division or agency of this State to supply it with data and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, officer, division or agency of the State is hereby required, to the extent not inconsistent with law, to cooperate with the Commission and to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order. The Attorney General, or her designee, shall act as legal counsel to the Commission.

6. This order shall effect immediately.

Issued January 18, 1994.

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#### EXECUTIVE ORDER No. 2

WHEREAS, In our representative form of government, it is essential that the conduct of public officials shall hold the respect and confidence of the people; and

WHEREAS, Those in government hold positions of public trust that require adherence to the highest standards of honesty, integrity and impartiality; and

WHEREAS, The New Jersey Conflicts of Interest Law prohibits a State officer or employee from having any interest or engaging in any activity that is in substantial conflict with the proper discharge of his or her duties in the public interest or from undertaking any employment or service which might reasonably be expected to impair his or her objectivity or independence of judgment; and

WHEREAS, The New Jersey Conflicts of Interest Law prohibits a State officer or employee from acting in his or her official capacity in any matter where he or she has a direct or indirect personal financial interest that might reasonably be expected to impair his or her objectivity or independence of judgment; and

WHEREAS, It has been previously recognized by the Executive Commission on Ethical Standards that members of the Executive Branch of State Government are often selected to act in policy making capacities because of the experience and expertise they have acquired in certain areas, but that such experience may cause these persons to have financial interests that would constitute an actual or potential conflict of interest or the appearance of such a conflict; and

WHEREAS, It has been previously recognized by the Executive Commission on Ethical Standards that to alleviate such a conflict, a blind trust may be utilized in certain circumstances to erect a barrier between State officers and employees and their investments so that such officers might be shielded from potential conflicts; and

WHEREAS, Ownership in any closely-held corporation that does business with governmental entities can raise the appearance of a potential conflict of interest; and

WHEREAS, It is the duty of government officials to earn the trust and confidence of the people by avoiding even the appearance of impropriety; and

WHEREAS, The disclosure of personal interest of public officials will serve to maintain the public's faith and confidence in its government representatives and will guard against conduct violative of the public trust;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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:

#### I. Personal Financial Disclosure

1. Every public employee and public officer as such terms are defined in Section 6 hereof shall file a sworn and duly notarized statement which is current as of five days prior to the date of filing. Each statement shall include the following information:

a. The name and position of the public employee or public officer;

b. Any occupation, trade, business or profession engaged in by the public employee or public officer, his or her spouse, and dependent children that is subject to licensing or regulation by a State agency;

c. A list of all assets having a value of more than \$1,000, both tangible and intangible, in which a direct or indirect interest is held by the public employee or public officer, his or her spouse, and dependent children, valued as of the statement date; provided, however, that when the value cannot be determined as of that date, a separate valuation date shall be specified for the particular asset. Where stocks and bonds are involved, there shall be included the name of the company, mutual fund, holding company or government agency issuing them (whenever such interest exists through ownership in a mutual fund or holding company, the individual stocks held by such mutual fund or holding company need not be listed; whenever such interest exists through a beneficial interest in a trust, the stocks and bonds held in such trust shall be listed only if the public employee or public officer has knowledge of what stocks and bonds are so held). Where more than 10 percent of the stock of a corporation is held, the percentage of ownership shall be stated. The list shall include any direct or indirect interest, whether vested or contingent, in any contract made or executed by a government instrumentality. In the case of real estate interests, there shall be given the location, size, general nature and acquisition date of any real property in New Jersey in which any direct, indirect, vested or contingent interest is held, together with the names of all individuals or entities who share a direct or indirect interest therein and the name of any government instrumentality that is a tenant of such property or that has before it an application, complaint or proceeding directly affecting such property. Assets of a public employee and his or her spouse shall be listed according to the following value categories:

- (i) greater than \$1,000, but not more than \$5,000;
- (ii) greater than \$5,000, but not more than \$25,000;
- (iii) greater than \$25,000, but not more than \$50,000;
- (iv) greater than \$50,000, but not more than \$100,000;
- (v) greater than \$100,000, but not more than \$250,000;
- (vi) Greater than \$250,000.

The value of assets of (1) the dependent children of a public employee or (2) a public officer, his or her spouse and dependent children need not be disclosed unless specifically requested by the Governor or the Executive Commission on Ethical Standards.

d. A list of all liabilities of the public employee or public officer, his or her spouse, and dependent children, valued by category in the same manner as required by paragraph c above, except liabilities which are:

(i) less than \$10,000 and owed to a relative as defined in Section 6 hereof;

(ii) less than \$1,000 and owed to any other person;

(iii) loans secured by a personal motor vehicle, household furniture or appliances where the loan did not exceed the purchase price of the item and the outstanding balance did not exceed \$10,000 as of the close of the preceding calendar year; and

(iv) revolving charge accounts where the outstanding liability does not exceed \$10,000 as of the close of the preceding calendar year;

e. A list of all liabilities otherwise subject to disclosure pursuant to paragraph d above of the public employee or public officer, his or her spouse, and dependent children which have been forgiven by the creditor within 12 months of the statement date. For each such forgiven liability so listed, the name of the creditor to whom such liability was owed shall be stated;

f. A list of all sources of income of the public employee or public officer, his or her spouse, and dependent children including all compensated employment of whatever nature, all directorships or other fiduciary positions for which compensation has or will be claimed, all capital gains including a description of the individual sources of such gains, all contractual arrangements producing or expected to produce income, and all honoraria, lecture fees and other miscellaneous sources of income including, but not limited to, interest, dividends, royalties and rents. Statements filed before July 1 of any year shall disclose sources of income for the preceding calendar year. Statements filed after July 1 of any year shall provide this information for the twelve-month period immediately preceding the filing date. The amounts of such income received shall be listed and valued by category in the same manner of assets as set forth in paragraph c(i) through (vi) above. The amount of income of (1) the dependent children of a public employee or (2) a public officer, his or her spouse and dependent children need not be disclosed unless specifically requested by the Governor or the Executive Commission on Ethical Standards. Sources of income that are not required to be reported are:

(i) cash gifts in an aggregated amount of less than \$100 received during the preceding twelve months from a person;

(ii) non-cash gifts with an aggregated fair market value of less than \$200 received during the preceding twelve months from a person; and

(iii) gifts with an aggregated cash or fair market value of less than \$3,000 received during the preceding twelve months from a relative as defined in Section 6 hereof.

g. A list of any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by the public employee or public officer, his or her spouse, and dependent children with any firm, corporation, association, partnership or business. If any firm, corporation, association, partnership or business does business with or is licensed, regulated or inspected by a State agency or does business with a casino license holder or applicant, the State agency, casino or applicant must be identified.

2. Each statement shall contain a certification by the public employee or public officer that he or she has read the statement, that to the best of his or her knowledge and belief it is true, correct and complete and that he or she has not transferred and will not transfer any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

3. a. Within 120 days from the effective date of this Order, each public employee and public officer who has not already done so shall file the signed and notarized statement required herein with the Office of the Governor's Counsel and one copy bearing an original signature and notarization with the Executive Commission on Ethical Standards. In furtherance of its duties under the Conflicts of Interest Law, N.J.S.A.52:13D-12 et seq. and pursuant to this Executive Order, the Executive Commission on Ethical Standards shall review each statement to determine its conformity with the provisions of this Order and other applicable provisions of the law. Upon approving such statement for filing, the Commission shall file and maintain a copy of it for public inspection and copying in accordance with the procedures set forth in N.J.S.A. 47:1A-1 et seq.;

b. Each prospective public employee and public officer shall, before assuming the office to which he or she has been appointed, satisfy the filing requirements of this Order, unless the Attorney General grants to such public employee or public officer an extension from the filing deadline. Such an extension shall not be granted more than twice and shall not be for more than 30 days each;



c. Updated statements shall be filed on the May 15 next succeeding the submission of the original statement and each May 15 thereafter provided, however, that public employees and public officers who file statements on or after January 18, 1994 but prior to May 15, 1994 need not file an updated statement on May 15, 1994 so long as the person who submitted such statement is a public employee or public officer of this State as defined in Section 6 of this Order.

4. The Executive Commission on Ethical Standards shall keep the approved statements on file for so long as the person submitting such statements is a public employee or public officer of this State, and for five years thereafter.

5. The Executive Commission on Ethical Standards shall have the primary responsibility for assuring the proper administration and implementation of this Order and shall have the power to perform the acts necessary and convenient to this end, including, but not limited to, preparing and distributing forms and instructions to be utilized by public employees and public officers in complying with this Order.

6. Except as otherwise herein provided, for purposes of this Order:

a. "Public employee" shall mean any person holding any of the following offices in the Executive Branch of State government, together with any offices added to such list by subsequent Executive order:

- (1) The Governor;
- (2) The head of each principal department;
- (3) The assistant or deputy heads of each principal department to include all assistant and deputy commissioners of such departments;
- (4) The head and assistant heads of a division of each principal department, or any person exercising substantially similar authority for any board or commission which is organized as in but not of a principal department or any independent authority;
- (5) The executive or administrative head and assistant heads of (i) any board or commission which is organized as in but not of a principal department or (ii) any independent authority;
- (6) The following members of the staff of the Office of the Governor:
  - (i) Chief of Staff;
  - (ii) Chief Counsel to the Governor;
  - (iii) Chief, Office of Policy and Planning;
  - (iv) Director of Communications;

(v) Executive Assistant to the Governor and any deputy or principal administrative assistant to any of the foregoing members of the staff of the Office of the Governor;

- (7) Members of the State Board of Agriculture;
- (8) Members of the State Board of Education;
- (9) Members of the Board of Higher Education;
- (10) Members of the State Parole Board; and
- (11) Presidents of the State colleges and universities.

b. "Public officer" shall mean:

(i) the members of the following boards, commissions, independent authorities and public corporations, together with any offices or bodies added to such list by subsequent Executive Order:

- (1) Agricultural Development Committee;
- (2) Atlantic City Convention Center Authority;
- (3) Capital City Redevelopment Corporation;
- (4) Casino Reinvestment Development Authority;
- (5) Council on Affordable Housing;
- (6) Education Facilities Authority;
- (7) Election Law Enforcement Commission;
- (8) Hackensack Meadowlands Development Commission;
- (9) Hazardous Waste Facilities Siting Commission;
- (10) Health Care Administration Board;
- (11) Health Care Facilities Financing Authority;
- (12) Hospital Rate Setting Commission;
- (13) Low-Level Radioactive Waste Disposal Facility Siting Board;
- (14) Merit System Board;
- (15) New Jersey Building Authority;
- (16) New Jersey Commission on Science and Technology
- (17) New Jersey Economic Development Authority;
- (18) New Jersey Expressway Authority;
- (19) New Jersey Highway Authority;
- (20) New Jersey Housing and Mortgage Financing Agency;
- (21) New Jersey Public Broadcasting Authority;
- (22) New Jersey Racing Commission;
- (23) New Jersey Sports and Exposition Authority;
- (24) New Jersey State Council on the Arts;
- (25) New Jersey Transit Corporation;
- (26) New Jersey Transportation Trust Fund Authority;
- (27) New Jersey Turnpike Authority;
- (28) New Jersey Urban Enterprise Zone Authority;
- (29) North Jersey District Water Supply Commission;
- (30) Passaic Valley Sewerage Commission;

- (31) Passaic Valley Water Commission;
- (32) Pinelands Commission;
- (33) Public Employment Relations Commission;
- (34) South Jersey Food Distribution Authority;
- (35) South Jersey Port Corporation;
- (36) South Jersey Transportation Authority;
- (37) State Athletic Control Board;
- (38) State Lottery Commission;
- (39) State Planning Commission;
- (40) Tidelands Resource Council;
- (41) Urban Development Corporation;
- (42) Wastewater Treatment Trust; and
- (43) Water Supply Authority.

(ii) individuals appointed as a New Jersey member to the following interstate agencies:

- (1) Atlantic States Marine Fisheries Commission;
- (2) The Delaware River and Bay Authority;
- (3) Delaware River Basin Commission;
- (4) Delaware River Joint Toll Bridge Commission;
- (5) Delaware River Port Authority;
- (6) Delaware Valley Regional Planning Commission;
- (7) Interstate Sanitation Commission;
- (8) Northeast Interstate Low-Level Radioactive Waste Commission;
- (9) Palisades Interstate Park Commission;
- (10) Port Authority of New York and New Jersey;
- (11) The Port Authority Trans Hudson Corporation;
- (12) South Jersey Port Corporation; and
- (13) Waterfront Commission of New York Harbor.

c. "Government instrumentality" shall mean the Legislative, Judicial and Executive Branches of State government, including any office, department, division, bureau, board, commission, council, authority or agency therein and any county, municipality, district, public authority, public agency or other political subdivision or public body in the State;

d. "State agency" shall mean any of the principal departments in the Executive Branch of State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and any independent State authority, commission, instrumentality or agency;

e. "Relative" shall mean a son, daughter, grandson, granddaughter, father, mother, grandfather, grandmother, great-

grandfather, great-grandmother, brother, sister, nephew, niece, uncle or aunt. Relatives by adoption, half-blood, marriage or remarriage shall be treated as relatives of the whole kinship.

7. Executive Order Nos. 1 and 9 of Governor James J. Florio and any subsequent Executive Orders issued in conjunction therewith are hereby rescinded, and any regulations adopted and promulgated thereunder are hereby null and void.

## II. Blind Trusts

1. For those situations where a blind trust may be utilized by a regular State employee or his or her spouse or dependent children and approved by the Executive Commission on Ethical Standards such trust shall contain the following characteristics:

a. The trust shall not contain investments or assets in which the holder's ownership right or interest is required to be recorded in a public office or those assets whose permanency makes transfer by the trustee improbable or impractical; these investments or assets would include, but not be limited to, businesses, real estate, security interests in personal property and mortgages;

b. The trust shall contain a clear statement of its purpose, namely, to remove from the grantor control and knowledge of investment of trust assets so that conflicts between grantor's responsibilities and duties as a regular State employee of the State of New Jersey and his or her private business or financial interests will be eliminated;

c. The trust shall be irrevocable, and shall be terminated only upon the death of the regular State employee or upon termination of his or her status as a regular State employee, whichever shall first occur;

d. The trustee shall be directed not to disclose to the grantor any information about any of the assets in the trust;

e. The trustee shall be required either to:

(i) prepare and file grantor's personal income tax returns, withholding from distribution of the trust's net income amounts sufficient to pay the grantor's tax; and further to participate in the audit of the grantor's returns during the period of the trust with authority to compromise the grantor's tax liability; or

(ii) submit to the grantor, for income tax purposes, a certification of income paid without identifying the assets producing such income;

f. Among its other powers, the trustee shall have authority to determine whether any of the assets originally transferred to the trustee are to be sold and, if so, when;

g. A provision shall be included in the trust agreement prohibiting the trustee from investing the trust property in corporations or businesses which it knows do a significant amount of business with the State of New Jersey or from knowingly making any investment in a corporation, business or venture over which the grantor has regulatory or supervisory authority by virtue of his or her official position;

h. The grantor shall retain no control over the trustee nor shall he or she be permitted to make any recommendations or suggestions as to the trust property;

i. The trustee shall be a commercial trustee and not a natural person;

j. The principal benefit to be retained by the grantor shall be the right to receive income from the assets transferred to the trust;

k. The trust shall not become effective until submitted and approved by the Executive Commission on Ethical Standards; and

l. The trust agreement shall provide that the trustee will give the Executive Commission on Ethical Standards access to any records or information related to the trust which is necessary for the performance of the Commission's duties.

2. A copy of the executed blind trust agreement shall be filed with the Executive Commission on Ethical Standards and with the head of the department in which the regular State employee holds his or her position. Attached to such copy shall be a brief statement outlining the business or financial interests from which the regular State employee seeks to remove himself or herself and the actual or potential conflicts of interest, or appearance of such conflicts, which he or she seeks to avoid by use of the trust agreement.

3. Executive Order No. 95 of Governor James J. Florio and any subsequent Executive Orders issued in conjunction therewith are hereby rescinded, and any regulations adopted and promulgated thereunder are hereby null and void.

### III. Interests in Closely Held Corporations or Similar Entities

A. No regular State employee who is required by law or Executive Order to submit financial disclosure statements to the Executive Commission on Ethical Standards 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 regular State employee who is employed as of the date of this Executive Order, and who 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 Executive Commission on Ethical Standards as to his or her interest, and his or her spouse's interest, in such a business entity with 120 days of the effective date of this Order. The Executive Commission on Ethical Standards 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 Executive Order, and whether the holdings are in compliance with the Conflicts of Interest Law, N.J.S.A. 52:13D-1 et. seq. and this Executive Order. No later than September 15, 1994, the Executive Commission on Ethical Standards 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 Executive Commission on Ethical Standards that the business entity has ceased to do business with a government entity in a manner prohibited by this Executive Order.

2. After the issuance of this Executive 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 Executive Order for the purpose of satisfying the provisions of this Executive Order. Furthermore, no employee shall obtain any prohibited interest in a business entity during the employee's tenure.

3. The provisions of subsections III A1 and III A2 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, sale, contract or agreement, including a change in orders and amendments thereto, shall receive the prior approval of the Exec-

utive Commission on Ethical Standards. The provisions of subsections III A1 and III A2 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 regular State employee or special State officer who is required by law or Executive Order to submit a financial disclosure statement to the Executive Commission on Ethical Standards shall retain any interest in any closely-held corporation, partnership, sole proprietorship or similar business entity unless the Executive Commission on Ethical Standards shall have first determined that the employee or officer may retain such an interest in such business entity.

1. Each regular State employee or special State officer who is employed or appointed as of the date of this Executive Order shall notify the Executive Commission on Ethical Standards as to his or her interest, and his or her spouse's interest, in any such business entity within 120 days of the effective date of this Order. The Executive Commission on Ethical Standards 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, N.J.S.A. 52:13D-1, et seq. and this Executive Order. The Executive Commission on Ethical Standards shall notify the State employee or officer of its findings no later than September 15, 1994. 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 Executive Order, no State agency shall employ or appoint any regular State employee or special State 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 Executive Commission on Ethical Standards 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 Executive Commission on Ethical Standards his or her interest, and his or her spouse's interest, in any such business entity as soon as practicable, and the Executive Commission on Ethical Standards shall render a determination no later than 30

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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 Executive Order for the purpose of satisfying the provisions of this Executive Order.

C. The Executive Commission on Ethical Standards shall review all financial disclosure statements as they may from time to time be submitted by regular State employees and special State 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 conflict of interest, within the meaning of this Executive Order.

D. Each regular State employee or special State officer shall amend his or her financial disclosure statement within 30 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 Executive Order and as determined by the Executive Commission on Ethical Standards, 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 officer or employee or the employee's or officer's spouse has an interest covered by this Executive Order.

E. Any regular State employee or special State officer subject to this Executive Order who acquires an interest prohibited under this Executive Order by way of inheritance, bequest or similar circumstances beyond his or her control shall follow the procedures for disclosure and disposition set forth in Section III A and Section III B of this Executive Order.

F. 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 regular State employee's or special State officer's immediate family.
3. The terms and conditions of any conveyance of ownership and control of the asset shall not contain any provision regarding the return of the asset to the regular State employee or special State officer subsequent to his or her State service.

G. For the purpose of Section II and Section III 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. 52:13D-13b, and "special State officer" shall have the same meaning as "Special State office 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, Sec. IV para. 1.

#### IV. Sanctions and Effective Date

- A. The failure of any employee or officer covered by Sections I, II and III of this Executive Order to comply with the provisions of this Executive Order shall constitute good cause for his or her removal from employment or office.
- B. This Executive Order shall take effect immediately.

Issued January 18, 1994.

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#### EXECUTIVE ORDER No. 3

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 December 1993 the total adult inmate population of State-sentenced prisoners was 23,133, including 3,629 State-sentenced inmates in county jails; and

**WHEREAS, The State's adult and youth correctional institutions are currently operating at 133.5 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 23,133, 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 warrants a centralized management approach to inmate housing assignments; and**

**WHEREAS, Despite the construction of three prisons constructed since the issuance of Executive Order No. 106 (Byrne) and designed for 3,000 inmates and which now house 5,034 inmates at a construction cost of approximately \$150 million, expansions of all existing facilities, and the opening of a facility at Fort Dix under a lease agreement with the federal government, 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, Executive Order No. 80 (Florio) of January 15, 1993, will expire on January 20, 1994; 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, The Supreme Court of New Jersey has determined that executive authority to address these emergency conditions under the Disaster Control Act expires on April 22, 1994;**

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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; No. 52 (Florio) of January 17, 1992, and No. 80 (Florio) of January 15, 1993, shall remain in effect until April 22, 1994, when Executive Order No. 80 (Florio) shall expire in accordance with the judicial order set forth by the New Jersey Supreme Court in County of Gloucester v. State of New Jersey (decided April 22, 1993), except that, so long as the foregoing Orders are in effect, the per diem rate established as a result of Executive Order No. 106 (Byrne) shall be increased as established in P.L.1993, c.155.

2. This Order shall take effect immediately.

Issued January 19, 1994.

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#### EXECUTIVE ORDER No. 4

WHEREAS, A series of severe winter storms over the past several weeks consisting of snow accumulation, freezing rain, high winds and consistent freezing and sub-freezing temperatures have posed numerous risks and adverse life safety impacts upon the citizens of the State of New Jersey; and

WHEREAS, The extreme record cold temperatures, accompanied by severe wind chill factors and icy conditions have produced heavy residential and commercial usage of heat and electrical

utilities which have resulted in electrical brownouts, stop-pages and other heating shortages throughout the State; and

**WHEREAS, The Board of Regulatory Commissioners is currently monitoring the energy supply shortage through its Emergency Information Center in order to keep apprised of and disseminate to all relevant parties the most current information regarding the energy shortage; and**

**WHEREAS, Pursuant to law, the Acting Commissioner of the Department of Environmental Protection and Energy has made a finding that there exists an energy supply shortage of a dimension which endangers the public health, safety and welfare of all regions of the State;**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 as follows:**

- 1. There is hereby declared a state of energy emergency for all heat and electrical utilities for the entire State.**
- 2. All State agencies, boards, authorities and commissions shall immediately manage their facilities in such a manner as to reduce the use of electricity.**
- 3. All local and county governmental entities are encouraged to reduce their electrical usage to only essential usage for the duration of this state of energy emergency.**
- 4. All commercial, residential and industrial power consumers are encouraged to reduce their use of electricity during this state of energy emergency.**
- 5. In order to facilitate the reduction of energy usage by all State agencies, boards, authorities and commissions, and in order to protect the safety of all State employees from hazard due to the severe ice and weather conditions, all non-essential State employees ("employees") are released from work today, January 19, 1994, pursuant to the following schedule:**

A. Any employee whose normal work day ends at 4 p.m. may leave at 3 p.m.;

B. Any employee whose normal work day ends at 4:30 p.m. may leave at 3:30 p.m.; and

C. Any employee whose normal work day ends at 5 p.m. may leave at 4 p.m.

6. This state of energy emergency shall remain in effect until it is rescinded by issuance of a subsequent Executive Order declaring that the state of energy emergency has terminated.

7. This Order shall take effect immediately.

Issued January 19, 1994.

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EXECUTIVE ORDER No. 5

WHEREAS, Due to the extreme cold temperatures, severe wind chill factors and icy conditions of recent weeks, heavy residential and commercial usage of heat and electrical utilities have resulted in electrical brownouts, stoppages and other heating shortages throughout the State; and

WHEREAS, The Acting Commissioner of the Department of Environmental Protection and Energy ("Acting Commissioner") has made a finding that there exists an energy supply shortage of a dimension which endangers the public health, safety and welfare of all regions of the State; and

WHEREAS, Based on the above finding by the Acting Commissioner, Executive Order No. 4 was issued on January 19, 1994 declaring a state of energy emergency for all heat and electrical utilities for the entire State, which Order is to remain in effect until it is rescinded by subsequent Executive Order; and

WHEREAS, The combination of improving weather conditions and compulsory and voluntary reductions in power usage by the citizens of the State has improved the energy supply; and

WHEREAS, The Acting Commissioner has made a finding that the energy supply shortage no longer exists;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 as follows:

1. The state of energy emergency for all heat and electrical utilities for the entire State declared in Executive Order No. 4 issued on January 19, 1994 is hereby terminated and Executive Order No. 4 is rescinded.

2. All energy consumers in the State are encouraged to continue efforts to conserve heat and electrical utilities for the duration of the extreme cold weather.

3. This Order shall take effect as of 11:59 p.m., January 21, 1994.

Issued January 21, 1994.

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#### EXECUTIVE ORDER No. 6

WHEREAS, Executive Order No. 79 issued on January 12, 1993 and Executive Order No. 92 issued on May 4, 1993 established the policy of the State with regard to the issuing of bonds, notes and other instruments, and the awarding of underwriting, bond counsel, architectural, engineering and other professional contracts; and

WHEREAS, It was recognized that implementation of Executive Order Nos. 79 and 92 and the procedures set in place as a result thereof would need continuous monitoring in order to ensure the effectiveness and appropriateness of the policies adopted; and

WHEREAS, The policies and procedures established by Executive Order Nos. 79 and 92 have now been in place for a number of months; and

**WHEREAS,** It is important that an analysis of the effect of these policies and procedures be conducted by the Executive Branch, which is responsible for administering the procedures and monitoring the results thereof; and

**WHEREAS,** It is appropriate that the views of the public and of the affected issuers, service providers and professionals be solicited on the existing procedures; and

**WHEREAS,** It is also important to ensure that the methods used by the State for the issuance of bonds, notes or other instruments and the selection of all underwriters, financial advisors, bond counsel and providers of other professional services provide the highest degree of quality and performance and instill the greatest level of public trust while at the same time yielding the maximum cost savings for the citizens of this State;

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 an Advisory Panel on Government Contracting Procedures (hereinafter "Advisory Panel") to consist of: a) the Attorney General, b) the State Treasurer and c) the Chief Counsel to the Governor, who shall serve as chair.

2. The Advisory Panel shall make a comprehensive review of the existing procedures for: a) the issuance of bonds, notes or similar instruments; b) the selection of underwriters in connection with the issuance of bonds, notes or other instruments; c) the retention of attorneys or law firms in connection with the issuance of bonds, notes or other instruments; and d) the retention of any engineering, architectural or other professional firms.

3. The Advisory Panel shall report its findings within six months of the effective date of this Order with detailed recommendations as to whether the existing procedures should remain in place or be altered in order to better accomplish the goals of achieving the best economic results with the highest degree of quality from the various providers and integrity in the award of State contracts.

4. All authorities which are required to submit their minutes, resolutions, or actions for gubernatorial approval or veto shall cooperate fully with the Advisory Panel in the implementation of this Order, and shall promptly furnish the members of the panel with any and all information that they may from time to time request.

5. The Advisory Panel is authorized to call upon any department, office, division or agency of this State to supply it with data and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, officer, division or agency of the State is hereby required, to the extent not inconsistent with law, to cooperate with the panel and to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order.

6. The Advisory Panel shall take care to solicit both written and oral comments from the public and the affected issuers, and service providers and professionals, and to consider the views expressed by those parties in its report.

7. This Order shall take effect immediately.

Issued January 27, 1994.

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#### EXECUTIVE ORDER No. 7

WHEREAS, Lonnie and Sandy Lehrer, legal residents of the Borough of Haworth, in the County of Bergen, State of New Jersey (the "Owners"), are owners of a dog, also known as "Taro", which dog has been ordered destroyed pursuant to N.J.S.A. 4:19-17 to -37; and

WHEREAS, The above-cited statute provides for proceedings in the form of hearings to determine whether a dog meets certain criteria prior to it being destroyed; and

WHEREAS, The proceedings established by the above-cited statute are similar to those established by forfeiture statutes, which apply to personal property; and



WHEREAS, Domestic animals may be properly and appropriately characterized as personal property for purposes of forfeiture; and

WHEREAS, Article V of the Constitution of the State of New Jersey provides, among other things, that the Governor may remit forfeitures; and

WHEREAS, N.J.S.A.2A:167-5 provides that any person who has suffered a forfeiture may make application for the remission of such forfeiture, "which application the governor may grant by order signed by [her]"; and

WHEREAS, The Owners have made application to the Governor to remit the forfeiture of Taro and good cause has been shown to warrant the granting of such application;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 forfeiture of Taro, which would result if said dog were destroyed pursuant to N.J.S.A. 4:19-17 to -37, is hereby remitted so long as the Owners certify and agree to the following within 30 days of the date hereof: (a) that Taro has been physically removed outside of the borders of the State of New Jersey and shall so forever remain; (b) that the new owners shall have had no prior ownership interest, either actual or asserted, in Taro; and (c) that the present and new owners shall accept any and all liability of whatever nature in connection with the ownership of Taro and the dog's future acts, with no legal recourse whatsoever to the State of New Jersey, County of Bergen and Borough of Haworth and all officers, employees and agents of said State, County and Borough.

2. This Order shall take effect immediately.

Issued January 28, 1994.

## EXECUTIVE ORDER No. 8

WHEREAS, Executive Order No. 1 (1994) established the New Jersey Economic Master Plan Commission ("Commission") consisting of a Chairperson and twelve (12) members appointed by the Governor, including the Secretary of State and the Commissioners of Commerce and Labor; and

WHEREAS, Reaction to the Commission has been extremely positive and many people have expressed an interest in serving as public members of the Commission; and

WHEREAS, The call for broad public participation on the Commission should be accommodated;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 Commission's membership shall be expanded and shall consist of a Chairperson and eighteen (18) members appointed by the Governor, including the Secretary of State, the Commissioner of the Departments of Commerce and Labor and the Chief of Policy and Planning.

2. Except as herein modified all of the provisions of Executive Order No. 1 (1994) shall remain in full force and effect.

3. This Order shall take effect immediately.

Issued February 15, 1994.

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EXECUTIVE ORDER No. 9

WHEREAS, Executive Order No. 2, issued on January 18, 1990, created the position of Environmental Prosecutor in the Department of Law and Public Safety; and

**WHEREAS, The position of Environmental Prosecutor was created in an effort to coordinate enforcement policy and oversee the prosecution of enforcement actions in environmental matters; and**

**WHEREAS, The coordination and oversight activities carried out by the Environmental Prosecutor can be achieved economically through the effective use of existing personnel within the Department of Law and Public Safety; and**

**WHEREAS, The Attorney General is best qualified to delegate the functions, powers and personnel of the Environmental Prosecutor; and**

**WHEREAS, It is the goal of the State of New Jersey to deliver efficient and cost-effective administrative services;**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 position of Environmental Prosecutor is hereby eliminated from the Department of Law and Public Safety.**

**2. Executive Order No. 2 (Florio) is rescinded.**

**3. The functions of the Environmental Prosecutor shall be reallocated within the Department of Law and Public Safety by the Attorney General in such a manner as she deems appropriate in order to maximize efficiency, service and cost-effectiveness.**

**4. This Order shall take effect immediately.**

**Issued March 15, 1994.**

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**EXECUTIVE ORDER No. 10**

**WHEREAS, Juvenile crime and youth violence are major problems throughout New Jersey especially in our most populated urban centers; and**

WHEREAS, New Jersey ranked 5th in the nation in the number of juvenile arrests and 4th in arrests made for serious violent crimes in 1992, with one in every five arrests being a juvenile arrest; and

WHEREAS, Juvenile arrests for murder, rape, robbery and aggravated assault have increased 34 percent since 1988 and juvenile drug arrests rose 7 percent in 1992; and

WHEREAS, Juvenile crime has become a leading cause of injury and death among young people, especially minority males in our urban centers; and

WHEREAS, Reorganization Plan No. 001 of 1993 and Executive Order No. 93 (Florio) created the Advisory Council on Juvenile Justice in the Department of Human Services to address select issues regarding the provision of services and, where appropriate, sanctions to juvenile delinquents and at-risk youths within the responsibility of that Department; and

WHEREAS, It has become increasingly clear that the problem of juvenile crime and youth violence must be addressed by all State departments involved with at-risk youth, as well as by local governments, and local agencies and service providers; and

WHEREAS, State departments, local governments and local agencies and service providers must work cooperatively to ensure the most timely, uniform and cost-effective provision of a full range of services and, where appropriate, sanctions for youth involved or at-risk of involvement in New Jersey's juvenile justice system;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 Advisory Council on Juvenile Justice is hereby reconstituted as set forth in this Order. The Advisory Council shall consist of no fewer than 21 or more than 26 members, and shall include:

a. The Attorney General, who shall serve as Chairperson;

- b. The Commissioner of Human Services, who shall serve as Vice-Chairperson;
- c. The Secretary of State;
- d. The Commissioner of Community Affairs;
- e. The Commissioner of Corrections;
- f. The Commissioner of Education;
- g. The Commissioner of Health;
- h. The Commissioner of Labor;
- i. The Public Defender;
- j. Between seven and twelve public members chosen by the Governor on the basis of their expertise and interest in making 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 Assembly shall each be asked to select two individuals chosen on the basis of their expertise and interest in making improvements to the juvenile justice system to serve as members of the Advisory Council.

2. The Advisory Council shall assist the Governor and the various State departments in order to:

- a. Expand the range of diversion and disposition options available to law enforcement, county prosecutors, social service agencies and the courts, including the sharing of resources to allow for more appropriate intervention programs on the local level.
- b. Develop a range of services and sanctions for committed youth, in particular those youth committed to secure youth facilities.
- c. Develop a range of services and, where appropriate, sanctions for non-committed youth who are involved or at-risk of involvement in the juvenile justice system. Youth services shall include, but not be limited to, prevention, intervention, education, treatment and rehabilitation services.
- d. Work with the county youth services commissions to fulfill their statutory responsibilities as outlined in P.L.1982, c.80, sec. 16, as amended (C. 2A:4A-91).
- e. Expand, replicate and develop successful model programs that involve families, schools, law enforcement and other community organizations in the prevention of juvenile crime and youth violence, using available resources.
- f. Improve record keeping and information sharing among State and local agencies involved with at-risk youth.

g. Develop job training and employment opportunities for at-risk youth.

h. Review, evaluate and coordinate allocations of State and federal funds to State departments, local governments and local agencies and service providers that provide services and, where appropriate, sanctions for youth involved in and at-risk of involvement in the juvenile justice system.

i. Examine State and local government systems for planning, coordinating, providing, and funding services and, where appropriate, sanctions for youth involved in and at-risk of involvement in the juvenile justice system.

j. Work cooperatively with any independent experts contracted to analyze New Jersey's juvenile justice system.

3. By June 30, 1994, the Advisory Council shall present to the Governor recommendations as to services and, where appropriate, sanctions for youth involved or at-risk of involvement in the juvenile justice system that can be expeditiously implemented using available resources.

4. By December 31, 1994, the Advisory Council shall provide the Governor and the Legislature with recommendations for the long-term improvement of New Jersey's juvenile justice system that shall include:

a. Recommendations as to the proper allocation of State, local, and federal funds to State departments, local governments and local agencies and service providers that provide services and, where appropriate, sanctions for youth involved or at-risk of involvement in the juvenile justice system.

b. Recommendations as to statutory, administrative, programmatic and structural changes that should be undertaken to ensure the most timely, uniform and cost-effective provision of services and, where appropriate, sanctions for youth involved in or at-risk of involvement in the juvenile justice system.

c. An evaluation, in conjunction with the Jamesburg Board of Trustees, of the operation of the New Jersey Training School for Boys and the Juvenile Medium Security Center during the term of management under Executive Order No. 93 (Florio) and recommendations for future management of these facilities.

d. An assessment and recommendations regarding the conclusions reached by any independent experts contracted to analyze New Jersey's juvenile justice system.

5. In performing its responsibilities, the Advisory Council shall, to the extent practicable, utilize existing data, reports, statistics, and other sources and materials -- national, State and local -- including, but not limited to:

- a. Juveniles in New Jersey Correctional Facilities, Community Mental Health Center, College of Medicine and Dentistry, Rutgers University, 1981;
- b. Beneath the Labels, Association for Children of New Jersey, 1981;
- c. A Call to Action Linking Policy with Need, the Governor's Committee on Children's Services Planning, 1985;
- d. New Jersey's Action Plan for Children, the Governor's Committee on Children's Services Planning, 1985;
- e. The Division of Criminal Justice's Juvenile Justice Action Plan, Draft Edition, 1988;
- f. The New Jersey Supreme Court's Final Report and Implementation Plan, 1989 Judicial Conference on Juveniles, Justice and the Courts;
- g. Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee. The Disproportionate Incarceration of Black and Hispanic Youth in New Jersey, 1990;
- h. A Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee. A Primary Prevention Plan for New Jersey. Towards a New Generation, 1990;
- i. Principles and Operating Procedures for the Family Division, Superior Court of New Jersey's Pathfinders Report, 1991;
- j. The Report of the Supreme Court Advisory Committee on the Family Division, 1992;
- k. The Association for Children of New Jersey's Report on the Establishment of an Office of Youth Services, 1992;
- l. The Report from the Cabinet Task Force on Children and Families. An Agenda for Children and Families, 1992;
- m. State and County Profiles of Child Well-Being. Kids County New Jersey, 1992;
- n. Publications and reports of the Juvenile Delinquency Commission especially its report, Profile 93;
- o. State of New Jersey Commission of Investigation, Criminal Street Gangs, 1993;
- p. The New Jersey Department of Education. Violence and Vandalism Prevention Task Force, 1994.

For this purpose, the Advisory Council shall collect from any State or local government or any other appropriate source data,

reports, statistics and other materials which are necessary to carry out its functions.

6. The Advisory Council on Juvenile Justice shall be in, but not of, the Department of Law and Public Safety.

7. The Office of the Attorney General shall coordinate staffing needs of the Advisory Council. Each Cabinet member of the Advisory Council shall assign a representative of her or his department to be designated as staff to the Advisory Council.

8. The Advisory Council is authorized to call upon any department or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, officer, division and agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Advisory Council and to furnish it with such information, personnel and assistance as is necessary to accomplish the purposes of this Order.

9. This Order shall take effect immediately.

Issued March 17, 1994.

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#### EXECUTIVE ORDER No. 11

WHEREAS, Executive Order No. 99, issued on September 13, 1993, established as 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 and timeliness and the State's policy regarding women- and minority-owned businesses; and

WHEREAS, Executive Order No. 99 mandated every State department, authority, or instrumentality authorized to implement public works projects to do so, whenever possible, subject to a project agreement with the applicable building and con-



struction trade union or council in whose jurisdiction the work is to be performed; and

WHEREAS, The conditions specifying a particular labor force placed on the bidding and award of public works projects set forth in Executive Order No. 99 have raised questions regarding competitiveness and other issues associated with those projects; and

WHEREAS, New Jersey has a compelling interest in awarding public works contracts in such a manner as to yield the lowest reasonable costs and the highest standard of quality and efficiency on the job; and

WHEREAS, A properly evaluated and effected project agreement, when appropriate, can ensure that a public project is completed at the lowest reasonable cost in a timely manner without labor disruptions such as strikes, lockouts or slowdowns; and

WHEREAS, The benefits of any proposed project agreement must be carefully weighed with respect to the effect such an agreement would have on competitive bidding, project costs and the State's policy to advance women- and minority-owned businesses; and

WHEREAS, The use of project agreements may be considered on a project-by-project basis where such project agreements clearly benefit the interests of the State from a cost, efficiency, quality, safety and/or timeliness standpoint;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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. 99 (Florio) is hereby rescinded and is superseded by this Executive Order No. 11.

2. A State department, authority or instrumentality may include a project agreement in a public works project on a project-by-project basis where it has been determined that such project agreement will promote labor stability and advance the State's interests in cost, efficiency, quality, safety and/or timeliness.

3. This Order does not require the use of a project agreement or selection of any particular union, trade council or labor organization.

4. In accordance with this Order, any project agreement:

(a) shall contain guarantees against strikes, lockouts, slow-downs or other similar action;

(b) shall set forth effective, immediate and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work; and

(c) shall be made binding on all contractors and subcontractors on the public construction project through the inclusion of appropriate bid specifications in all relevant bid documents.

5. Any decision to use a project agreement in connection with a public works project by a State agency, authority or instrumentality shall be supported by a written, publicly disclosed finding by such agency, authority or instrumentality setting forth the justification for use of the project agreement.

6. All State agencies, authorities and instrumentalities are hereby ordered to ensure that all public works projects are implemented in a manner consistent with the terms of this Order and are in full compliance with all statutes, regulations and executive orders, including Executive Order No. 84 (Florio) regarding the implementation of set-aside goals for women- and minority-owned businesses.

7. This Order shall take effect immediately and is intended to have prospective effect only.

Issued March 21, 1994.

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#### EXECUTIVE ORDER No. 12

WHEREAS, A natural gas transmission pipeline located in the Township of Edison, County of Middlesex, exploded on or about midnight on March 24, 1994; and

WHEREAS, It has been reported that an approximately 150-foot fire stream erupted from the pipeline following the explosion

which caused the destruction of nine buildings in the Durham Woods Apartment Complex; and

WHEREAS, It has been reported that hundreds of residents residing in a one-quarter mile area of the scene were evacuated; and

WHEREAS, An investigation is underway to ascertain the cause of such explosion and the extent of fatalities and/or personal injury, if any, as well as additional property damage; and

WHEREAS, Until the results of said investigation are known, we must take every precaution to ensure that similar pipeline failures do not occur; and

WHEREAS, The conditions caused by the explosion and fire pose a threat and constitute a disaster which threatens and presently endangers the health, safety or resources of the residents of Edison Township, which threat and endangerment may be too large in scope to be handled in its entirety by the normal county and municipal operating services; and

WHEREAS, The Constitution and Statutes of the State of New Jersey, particularly, but not limited to, the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-33 et seq.) and the Laws of 1963, Chapter 109 (N.J.S.A.38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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:

1. A State of Emergency has and presently exists in this State.
2. The Acting Superintendent of the Division of State Police shall provide State Troopers and other personnel assigned to the Division of State Police, in such numbers as he deems necessary to protect the health, safety and resources of the residents of the Township of Edison and the State of New Jersey.
3. 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 need to be evacuated from their residences during the course of this emergency.

4. 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.

5. The Department heads of the various agencies of State Government who are called upon to provide assistance during this State of Emergency shall lend their assistance and take appropriate action to ensure the protection of the health, safety and resources of the residents of the Township of Edison and the State of New Jersey, due to this emergency.

6. Until the results of the investigation are known, all natural gas suppliers having gas transmission lines in this State shall reduce transmission pipeline pressure by five (5) percent of the Maximum Available Operating Pressure (MAOP) and coordinate said reduction with gas distribution entities to ensure the safety of all customers and continuity of service. The Commissioner of the Department of Environmental Protection and Energy and President of the Board of Regulatory Commissioners shall meet, as soon as practicable, with representatives of the affected natural gas suppliers and representatives of the gas utilities doing business in the State to obtain any recommendations for any adjustments or modifications deemed necessary to this Paragraph and to ensure its safe implementation.

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 25, 1994.

## EXECUTIVE ORDER No. 13

WHEREAS, A natural gas transmission pipeline located in the Township of Edison, County of Middlesex, exploded at or about midnight on March 24, 1994; and

WHEREAS, Conditions and issues related to the explosion required that I invoke the emergency powers vested in the Governor by the Constitution and Statutes of this State, including, but not limited to, the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-3 et seq.) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4); and

WHEREAS, I issued Executive Order No. 12 on March 25, 1994, declaring a state of emergency, which Order provided, among other things, that all natural gas suppliers reduce transmission pipeline pressure by five (5) percent of the Maximum Available Operating Pressure; and

WHEREAS, Such Order also provided that the Commissioner of the Department of Environmental Protection and Energy and President of the Board of Regulatory Commissioners should meet with representatives of the affected natural gas suppliers and representatives of the gas utilities to obtain their recommendations, which meeting was held on March 29, 1994 and included representatives of the Federal Energy Regulatory Commission and the U.S. Department of Transportation, Office of Pipeline Safety; and

WHEREAS, The State of New Jersey and the federal government have agreed to conduct a joint investigation of all interstate natural gas transmission pipelines operating in the State of New Jersey; and

WHEREAS, The parties have agreed to cooperate with future federal and State regulatory inspections, and the U.S. Department of Transportation, Office of Pipeline Safety has ordered a reduction of pipeline pressure in the vicinity of the explosion with respect to the line involved,

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me

by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The state of emergency that prompted the issuance of Executive Order No. 12 having subsided, Executive Order No. 12 is hereby rescinded.

2. Nevertheless, the Acting Superintendent of the Division of State Police remains 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 need shelter as a consequence of the emergency.

3. The Acting Superintendent of the Division of State Police remains authorized to order the evacuation of all persons from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by the emergency.

4. The Department heads of the various agencies of State government who are called upon to provide assistance in the aftermath of the Edison explosion shall continue to lend assistance to ensure the protection of the health, safety, and resources of the residents of the Township of Edison and the State of New Jersey.

5. This Order shall take effect immediately.

Issued March 29, 1994.

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#### EXECUTIVE ORDER No. 14

WHEREAS, The institutions of higher education are one of the most valuable and underutilized resources in the State; and

WHEREAS, The elimination of State oversight and its accompanying bureaucracy will serve to unleash the creativity and innovation of these institutions; and

WHEREAS, The Governor has proposed the elimination of the Department of Higher Education as of July 1, 1994 and the

shifting of its core functions to other areas of State government and to the institutions themselves; and

WHEREAS, Implementation of the proposal must provide that student aid programs be not only preserved but also strengthened and that the State continue to foster and encourage programs to promote diversity and accessibility; and

WHEREAS, Higher education must continue to be affordable for students; and

WHEREAS, Any legislation or executive order to accomplish these objectives should be proposed with the active participation of the entire higher education community;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 Advisory Panel on Higher Education Restructuring is hereby established as set forth in this Order. The Advisory Panel shall consist of fifteen (15) members as follows:

- a. Thirteen (13) members, including the chair and vice chair, appointed by the Governor, at least four of whom shall be presidents of higher education institutions in the State, and two of whom shall be members of the State Board of Higher Education;
- b. One (1) member appointed by the President of the Senate;
- c. One (1) member appointed by the Speaker of the General Assembly.

2. The Advisory Panel shall assist the Governor in proposing legislation to implement the restructuring of the system of higher education based upon the objectives set forth below.

3. The proposed legislation should address the following objectives:
- a. Institutions of higher education must be given maximum autonomy with a minimum of bureaucratic controls in order to meet the specific needs of their students.
  - b. Higher education must be affordable and accessible.
  - c. Political influences must not intrude into the decision-making process.

- d. The system must avoid administrative overlap and duplication.
4. The proposed legislation should provide for the elimination of the Department of Higher Education with the core functions of the department being shifted to the appropriate entities, including but not limited to:
  - a. A coordinating council consisting of the presidents of each public or private institution of higher education, which council would be responsible for the coordination of programs among the various institutions; and
  - b. A commission for higher education, which commission would be responsible for long range planning for higher education.
5. The Advisory Panel shall present its recommendations on or before May 2, 1994.
6. The Advisory Panel is authorized to call upon any department, offices or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, officer, division and agency of this State is hereby required to cooperate with the Advisory Panel and to furnish it with such information, personnel and assistance as is necessary to accomplish the purposes of this Order.
7. This Order shall take effect immediately.

Issued March 30, 1994.

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EXECUTIVE ORDER No. 15

WHEREAS, There has been a marked increase in the number and complexity of permits, licenses, certificates and other approvals that businesses and all other sectors of the economy must obtain from an increasing variety of State agencies to undertake various commercial, industrial, and residential projects or activities in the State; and



**WHEREAS, This expanding maze of regulation has made the cost of doing business in the State higher than in other states in many instances; and**

**WHEREAS, The inefficiencies resulting from the excessive cost of regulation have impeded the overall development of the economy and the growth of the State's individual businesses; and**

**WHEREAS, Such inefficiencies have also discouraged the location of new businesses and the expansion of existing ones in the State; and**

**WHEREAS, The combined effects of the inefficiencies have adversely affected the business climate in the State; and**

**WHEREAS, It is possible to uphold existing standards for the public health, safety and welfare while at the same time expediting compliance with regulations; and**

**WHEREAS, State government must provide leadership in transforming the State business climate into one that is supportive of and open towards business; and**

**WHEREAS, There is a need for a single office to coordinate exclusively an efficient and timely process for submission, evaluation, and resolution of applications for business permits, licenses, certificates and other approvals;**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby ORDER and DIRECT:**

**1. There is hereby created the Office of the Business Ombudsman (hereinafter "Office") to be located in the Department of State.**

**2. The Secretary of State shall serve as the Business Ombudsman or appoint her designee to this position.**

**3. The Business Ombudsman shall be empowered to lead the Office in its primary responsibility of directing a comprehensive effort to assist businesses in dealing efficiently with State regulations.**

4. Specifically, the Office shall function to provide guidance to persons who inquire about business permits, licenses, certificates and other business-related approvals. Any such similar functions of the Office of Business Advocacy in the Department of Commerce and Economic Development shall be transferred to the Office. The files, books and records of the Office of Business Advocacy that are relevant to its function of providing guidance to persons who inquire about business permits, licenses, certificates and other approvals shall be transferred from the Office of Business Advocacy to the Office.

5. Consistent with the consolidation of the aforementioned functions of the Office of Business Advocacy into the Office, the Secretary of State, or her designee, shall replace the Chief of the Office of Business Advocacy on the Cabinet Committee on Permit Coordination (hereinafter "Cabinet Committee"), which Cabinet Committee was reconstituted pursuant to Executive Order No. 100 of Governor Thomas H. Kean. Moreover, the Secretary of State, or her designee, shall replace the Commissioner of Commerce and Economic Development as Chairperson of the Cabinet Committee, and the Office shall assume the roles performed by the Office of Business Advocacy for the Cabinet Committee. The Secretary of State shall appoint an Executive Director of the Cabinet Committee.

6. All functions currently performed by the Office of Business Advocacy that do not relate to providing guidance to persons who inquire about business permits, licenses, certificates and other business-related approvals shall remain in said Office of Business Advocacy in the Department of Commerce and Economic Development.

7. The Office is hereby directed to provide guidance to persons who inquire about business permits, licenses, certificates and other approvals that are required to do business in this State.

8. The Business Ombudsman is hereby authorized to appoint and remove such staff as may be required to fulfill the mandates of this Order, subject to the provisions of Title 11A (Civil Service Act) of the Revised Statutes, when relevant, other applicable statutes, and the appropriations limit for the Office. Any persons appointed by the Business Ombudsman under this Order shall be designated employees of the Department of State.

9. The Business Ombudsman shall maintain the Office and such other quarters as deemed necessary to the proper functioning of the Office.

10. The Office is authorized to call upon any department, office, division or agency of this State to supply it with data and other information or assistance as deemed necessary to discharge the duties of the Office 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 Business Ombudsman and provide such information and assistance as is necessary to accomplish the purpose of this Order. Notwithstanding anything in this Order to the contrary, the Office shall not supplant the function of any department, office, division or agency of the State to review and approve any governmental permit, license, certificate or other approvals.

11. This Order shall take effect immediately.

Issued April 5, 1995.

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EXECUTIVE ORDER No. 16

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 overcrowded; and

WHEREAS, As of March 1994 the total adult inmate population of State-sentenced prisoners was 23,608, including 4,020 State-sentenced inmates in county jails; and

WHEREAS, The State's adult and youth correctional institutions are currently operating at 134.3 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 under the authority of the Disaster Control Act, until this month, the population of State-sentenced prisoners grew from 7,940 to 23,608, exceeding all predictions for inmate population growth and 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 warrants a centralized management approach to inmate housing assignments; and

WHEREAS, Despite the construction of three prisons since the issuance of Executive Order No. 106 (Byrne), designed for 3,000 inmates and which now house 5,034 inmates at a construction cost of approximately \$150 million, expansions of all existing facilities, and the opening of a facility at Fort Dix under a lease agreement with the federal government, the prison population growth has consistently outstripped infrastructure expansion throughout the past decade, exacerbating crowding 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 State continues to make a good faith effort to reduce the population of State-sentenced inmates housed in county facilities; 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, The Supreme Court of New Jersey has determined that executive authority to address these emergency conditions under the Disaster Control Act expires on April 22, 1994; and

WHEREAS, Executive Order No. 3 of January 19, 1994 was issued pursuant to the Disaster Control Act to address these emergency conditions and will expire on April 22, 1994; and

WHEREAS, The State Legislature, by enactment of P.L.1994, c. 12, has declared a continuing state of emergency in the State

prisons and other penal and correctional institutions of the New Jersey Department of Corrections; and

WHEREAS, The State Legislature, by enactment of P.L.1994, c. 12, has conferred upon the Governor the authority to issue executive orders pursuant to that act in order to address the effects of the continuing state of emergency declared therein;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 as follows:

1. I invoke such powers as are conferred upon me by P.L. 1994, c. 12 .

2. I hereby direct that the authority to designate the place of confinement of any State-sentenced inmate shall be exercised for the duration of this Order by the designee of the Governor to address the emergency conditions within the State prisons and other penal and correctional institutions of the New Jersey Department of Corrections.

3. I hereby designate the Commissioner of the New Jersey Department of Corrections (the "Commissioner") to effectuate the provisions of this Order.

4. The Commissioner may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether owned by the State, a county, or any political subdivision of this State, or any other person, for the confinement of inmates confined or to be confined in the State and/or county penal or correctional institutions.

5. The Commissioner shall consult with the appropriate county officials prior to implementation of any substantial change in the population of State-sentenced inmates housed in that county.

6. The Commissioner shall have full authority to adopt such rules, regulations, orders and directives as he shall deem necessary to effectuate the provisions of this Order.

7. The Commissioner shall establish a per diem rate in accordance with existing law to compensate counties that house State-sentenced inmates.

8. This Order shall take effect immediately.

Issued April 4, 1994.

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EXECUTIVE ORDER No. 17

WHEREAS, Saving tax dollars without compromising the availability and quality of State services is a cornerstone of this Administration; and

WHEREAS, State government must identify and pursue innovative methods of achieving these goals; and

WHEREAS, Privatization, through reliance on private enterprise, market forces and competition for providing public services, may be one alternative by which to save tax dollars and maintain, and possibly improve, State services; and

WHEREAS, A comprehensive study should be conducted to analyze the feasibility of prudent privatization of selected government services and evaluate the potential consequences of such privatization;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 New Jersey Advisory Commission on Privatization, hereinafter referred to as the Commission.

2. The Commission shall consist of a chairperson and four (4) other members appointed by the Governor.

3. The Commission shall: (1) conduct a review of existing feasibility studies and actual experiences of governments that have initiated privatization efforts; (2) evaluate the advantages and disadvantages associated with privatization generally; (3) conduct a feasibility study of New Jersey State government, including a cost-benefit and implementation analysis, to identify those areas where privatization would result in cost savings and quality improvements; and (4) propose appropriate and beneficial methods of implementing privatization in this State.

4. The Commission shall periodically report to the Governor and shall issue its recommendations in writing by December 31, 1994.

5. The Commission is authorized to call upon any department, office, division, or agency of this State to supply it with data and other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, officer, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Commission and to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order. The Attorney General, or her designee, shall act as legal counsel to the Commission.

6. This Order shall take effect immediately.

Issued April 18, 1994.

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#### EXECUTIVE ORDER No. 18

WHEREAS, On May 24, 1984 Executive Order No. 72 of Governor Kean created the Governor's Council on the Prevention of Mental Retardation; and

WHEREAS, The Council is composed of commissioners of various State departments and of concerned citizens who have had distinguished records in the area of mental retardation and developmental disabilities; and

WHEREAS, Public Law 1987, Chapter 5 (N.J.S.A. 30:1AA-10 to -19) was enacted on January 20, 1987 establishing a permanent

Office for Prevention of Mental Retardation and Developmental Disabilities in the Department of Human Services; and

WHEREAS, The Governor's Council on the Prevention of Mental Retardation was renamed the Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities by Executive Order No. 178 of Governor Kean on July 30, 1987; and

WHEREAS, The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities was continued for one year by Executive Order No. 223 of Governor Kean and for three years by Executive Order No. 30 of Governor Florio; and

WHEREAS, Under N.J.S.A. 30:1AA-15, the Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities serves as an Advisory Council to the Office for Prevention of Mental Retardation and Developmental Disabilities and to the Commissioner of the Department of Human Services; and

WHEREAS, The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities is an essential component of the Office for Prevention of Mental Retardation and Developmental Disabilities and should continue to serve as an Advisory Council; and

WHEREAS, The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities lapsed on December 31, 1993;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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. The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities is hereby continued as of December 31, 1993 and shall remain in existence until December 31, 1996.

a. The Council shall consist of no more than 25 public members appointed by the Governor. The members shall be appointed from among persons representing people with disabilities, professionals in mental retardation and developmental disabilities, and persons from the business and health communities.



b. The Secretary of State and the Commissioners from the Departments of Human Services, Health, Education, Environmental Protection and Energy, Community Affairs, and/or their designees, shall serve on the Council.

c. The public members shall continue to serve for staggered three-year terms. Council vacancies among the public members shall be filled by appointment by the Governor for the remainder of the unexpired term.

d. The Governor shall designate the chairperson of the Council from among members of the Council. The chairperson of the Council shall serve at the pleasure of the Governor.

e. The Council may further organize itself in any manner it deems appropriate and may enact by-laws it deems necessary to carry forth its responsibilities.

2. The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities shall:

a. Advise the Secretary of State and the Commissioners of the Departments of Human Services, Health, Education, Environmental Protection and Energy, Community Affairs, and the Office for Prevention of Mental Retardation and Developmental Disabilities in the Department of Human Services, regarding the priorities for prevention in the State;

b. Mobilize citizens and community agencies to support prevention-related activities;

c. Develop mechanisms to facilitate early detection;

d. Foster cooperative working relationships among responsible agencies; and

e. Provide other information on prevention as the Governor may request.

3. The Council, in performing its duties, shall consult with existing agencies for planning, coordination and delivery of prevention services to families at the State, county and local levels.

4. The Departments of State, Human Services, Health, Education, Environmental Protection and Energy, and Community Affairs are authorized and directed, to the extent consistent with law, to cooperate with the Council and to furnish it with such staff, office space and supplies as necessary to carry out its purpose under this Order.

5. The Council shall be responsible for serving as the Advisory Board to the New Jersey Disabilities Prevention Program, as funded through a cooperative agreement with the federal Centers for Disease Control and Prevention, and shall provide guidance to the Office for Prevention of Mental Retardation and Developmental Disabilities regarding the establishment, monitoring and evaluation of programs and surveillance systems for the prevention of disabilities.

6. This Order shall take effect immediately.

Issued May 2, 1994.

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EXECUTIVE ORDER No. 19

WHEREAS, Executive Order No. 51 of Governor Kean created the Governor's Task Force on Child Abuse on November 16, 1983; and

WHEREAS, The Governor's Task Force on Child Abuse was to conclude its work by January 1, 1985; and

WHEREAS, On July 19, 1985 the Governor's Task Force on Child Abuse was subsequently renamed the Governor's Task Force on Child Abuse and Neglect pursuant to Executive Order No. 110 by Governor Kean; and

WHEREAS, The Governor's Task Force on Child Abuse and Neglect was continued by Executive Order Nos. 110, 173 and 217 of Governor Kean and by Executive Order No. 53 of Governor Florio until it expired on December 31, 1993; and

WHEREAS, The members of the Task Force have continued to address with dedication the problem of child abuse and neglect within the State; and

WHEREAS, There is still a need for the Task Force to educate the community and make the public aware of this serious social problem, to prevent child abuse and neglect, to coordinate

activities relating to child abuse and neglect, and to ensure community support for these child protection measures;

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 Governor's Task Force on Child Abuse and Neglect is hereby continued as of December 31, 1993 and shall remain in existence until December 31, 1996.

2. The Task Force shall consist of no more than 15 public members appointed by the Governor. The Governor shall appoint the public members from among persons representing prosecutors' offices, police departments, physicians, hospitals, schools, civic groups, public housing authorities, child advocacy organizations, public service agencies, business and industry, and child or family social work organizations. The Governor may also appoint victims of child abuse or their families and county freeholders as public members.

The Commissioners of the Departments of Human Services, Education, Health, Corrections and Community Affairs; the Secretary of State; the Chief Justice of the New Jersey Supreme Court; the Attorney General and the Superintendent of the State Police; or their designees, shall also serve on the Task Force.

3. Task Force vacancies shall be filled by appointment by the Governor for the remainder of the unexpired term.

4. The Task Force may solicit, receive, disburse and monitor grants and other funds available from any governmental, public, private, not-for-profit or for-profit source, including, but not limited to, funding available under any federal or State law, regulation or program.

5. All departments, agencies and divisions are authorized and directed, to the extent not inconsistent with law, to continue to cooperate with the Task Force.

6. The Department of Human Services is authorized and directed to continue to furnish the Task Force with such staff, office space and supplies as are necessary to accomplish the purpose of this Order.

7. All other provisions of Executive Order Nos. 51, 110, 173 and 217 of Governor Kean and Executive Order No. 53 of Governor Florio shall remain in full force and effect without any modification.

8. This Order shall take effect immediately.

Issued May 2, 1994.

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#### EXECUTIVE ORDER NO. 20

WHEREAS, The National and Community Service Trust Act of 1993 (the Act) has been enacted to help States meet the human, educational, environmental and public safety needs of communities; and

WHEREAS, The Corporation on National and Community Service (Corporation) was established pursuant to the Act to engage Americans of diverse backgrounds, age groups and educational levels in service to the community and provide educational awards and/or living stipends to individuals who make a substantial sacrifice to community service; and

WHEREAS, There are thousands of New Jerseyans who donate thousands of hours as volunteers and perform community service, which promotes good citizenship and responsibility to the community; and

WHEREAS, These New Jersey volunteers may, through the structures and funding provided under the Act, better serve the needs of their community; and

WHEREAS, The State of New Jersey has received approval from the Corporation to establish a State commission as the entity which will be responsible for selecting AmeriCorps National Service Programs and to apply to receive funds for community-based Learn and Serve America programs; and

WHEREAS, The State Commission, together with the Corporation, will assist programs in recruiting participants, disseminating information about service opportunities, and providing technical assistance to communities organizing service programs; and

**WHEREAS, The government of the State of New Jersey is in a position to promote volunteerism and community service by bringing together the State's leading volunteers and community service activists to provide leadership, guidance, and oversight of the State Commission; and**

**WHEREAS, It is the role of the State under the Act, to provide funding through the resources appropriated thereunder for the most innovative, constructive, and effective service programs in the State in order to build on existing infrastructures and carry out the statutory mandates necessary to receive funding from the Corporation; and**

**WHEREAS, Selection, coordination, and oversight of Statewide efforts to enhance volunteerism and service to the community, as called for by the Act, can best be achieved by the creation of a New Jersey State commission;**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and the Statutes of this State, do hereby ORDER and DIRECT:**

**1. There is hereby established the New Jersey Commission on National Service (Commission) to be located within the Department of Education. The Commission shall:**

**a. Develop a three-year comprehensive State Plan which can be updated annually, and is developed through an open and inclusive process that ensures outreach to diverse community-based agencies.**

**b. Develop a strategy for private sector development to aid the State in implementing national service throughout the State.**

**c. Assist and coordinate with the State Department of Education in completing Learn and Serve America and AmeriCorps applications for grant funding.**

**d. Provide funding, through the resources appropriated under the Act for programs that are within the guidelines established by the New Jersey State Plan.**

**e. Monitor grant programs through on-site visits, and review of quarterly and annual programmatic reports so that the goals of the program and the Trust Act are fulfilled.**

f. Directly oversee grant programs that are funded by the Corporation and help them develop projects, training methods, and curriculum materials.

g. Establish a process for recruitment and placement for National Service participants and disseminate information about service programs.

h. Advise the Corporation, based upon State priorities, on which programs should receive funding under the Domestic Volunteer Service Act of 1973.

i. Make recommendations to the Corporation regarding funding for VISTA and Older American Volunteer programs within the State.

j. Coordinate and assist volunteer programs by working with other State governmental agencies.

k. Coordinate with State agencies such as the Governor's Office of Volunteerism, the Governor's Advisory Council on Community Service, the Academy for Community Service and Service Learning, and other agencies that have not been previously represented.

l. Provide technical assistance to enable applicants to plan and implement service programs.

m. Assist in the provision of health care and child care benefits as required in the AmeriCorps program.

n. Perform any other duties as required by federal law.

2. The New Jersey Commission on National Service shall be comprised of not fewer than fifteen nor more than twenty-five voting members, appointed by the Governor, and shall reflect the diversity of the State of New Jersey.

a. The members shall include:

1. An individual with expertise in educational, training and developmental needs of youth, particularly disadvantaged youth;

2. An individual with expertise in promoting the involvement of older adults in service and volunteerism as defined by the Domestic Volunteer Service Act of 1973;

3. A representative of community-based agencies or organizations within the State;

4. The Commissioner of Education or his designee;

5. A representative of local governments in the State;

6. A representative of local labor organizations in the State;

7. A representative of business;

8. Youth Service Program participants, including in-school, college-based, and out-of-school participants; and

9. A National Service participant.
  - b. The balance of the twenty-five voting members shall be representative of the following:
    1. Local education agencies;
    2. Out of school and "at risk" youth;
    3. Local higher education community;
    4. Native American tribes;
    5. Programs receiving assistance under the Domestic Volunteer Service Act;
    6. A local expert in the delivery of human service programs;
    7. A local expert in the delivery of public safety services;
    8. A local expert in the delivery of environmental services and/or programs;
    9. The chairperson of the Governor's Advisory Council on Community Service and Volunteerism;
    10. A member of the Governor's Youth Advisory Council; and
    11. Two members of the Legislature, no more than one of whom shall be of the same political party.
  - c. The voting members shall include youth representing the wide array of service programs throughout New Jersey and other private citizens and organizational representatives.
  - d. In addition to the twenty-five voting members, representatives engaged in or planning to implement service or service learning programs from the Governor's Office of Volunteerism, Department of Agriculture, Department of Commerce, Department of Community Affairs, Department of Corrections, Department of Environmental Protection and Energy, Department of Health, Department of Human Services, Department of Labor, Department of Law and Public Safety, Department of Transportation, Education Service Office of the New Jersey Army National Guard shall serve as ex-officio, non-voting members of the Commission.
  - e. Representatives shall be sought from the State Employment and Training Commission and the State Human Services Advisory Committee, and the Center for Non-Profits, in order to serve as ex-officio members.
  - f. A representative of the Corporation will sit on the State Commission as an ex-officio member and act as liaison between the Commission and the Corporation.
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3. The selection process shall adhere to the following guidelines:
    - a. The process through which applicants to the State Commission are reviewed shall ensure diversity with respect to race,

ethnicity, age, gender, disability characteristics, and political affiliation to the maximum extent practicable.

b. The Governor's Appointments Office will assist in ensuring bipartisan representation, as no more than fifty percent of the voting members, plus one additional member, shall be from the same political party.

4. Members of the Commission shall:

a. Serve three-year terms, except for the terms of the members first appointed, who shall serve as follows: one-third shall serve for a term of one year, one-third shall serve for a term of two years and one-third for a term of three years.

b. Elect their own chair.

c. Not participate in grant decisions if they are, or were at any time in the previous year, an officer, director, trustee, full-time employee, or volunteer with a National service program.

d. Serve without compensation, except that members may receive per diem and travel expenses.

5. This Order shall take effect immediately.

Issued June 13, 1994.

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EXECUTIVE ORDER NO. 21

WHEREAS, Promoting harmonious relations between the State and its employees while insuring the efficient and continuous delivery of public services is a goal of this Administration; and

WHEREAS, Collective negotiations between the State and its employees concerning the terms and conditions of employment can be improved by implementing a coordinated and integrated approach to human resource management; and

WHEREAS, Executive Order No. 3, issued on April 2, 1970, created the Governor's Employee Relations Policy Council to review and evaluate the policy of the State with respect to employee relations and recommend alternatives to facilitate cooperation between the State and its employees; and



WHEREAS, Executive Order No. 4, issued on April 2, 1970, created the Office of Employee Relations in, but not of, the Department of the Treasury to assist the Governor's Employee Relations Policy Council and conduct collective negotiations with employee organizations; and

WHEREAS, It is necessary to rescind Executive Orders No. 3 and No. 4 in order to reorganize these functions to maximize efficiency, service and cost-effectiveness;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of the State of New Jersey, do hereby ORDER and DIRECT:

1. Executive Order No. 3 (1970) is rescinded.
2. (a) There is hereby reconstituted the Governor's Employee Relations Policy Council.  
(b) The Council shall consist of the Commissioner of the Department of Personnel as chairperson, the Commissioner of the Department of Labor, the Attorney General, the Chief Counsel to the Governor and the State Treasurer, or their designees. The members of the Council shall serve ex officio.  
(c) The Council shall advise the Governor on employee relations policy, negotiation issues and strategies, contract acceptance, and related matters involving State employees. The Council shall serve, through counsel, as the Governor's agent in conducting collective negotiations with employee organizations.  
(d) The Council shall meet at the request of the Governor or Chairperson. The Council shall render such reports to the Governor as the Council determines necessary or as the Governor directs.
3. The Council is authorized to hire such outside consultants as deemed necessary to fulfill its mandate pursuant to this Order.
4. (a) The Council is authorized to call upon any department, office, division or agency of the State to supply such statistical data, program reports, and other information or personnel and materials as it deems necessary to discharge its responsibilities under this Order.  
(b) Each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to

cooperate with the Council and to furnish it such information and assistance as it may find necessary in the discharge of its responsibilities under this Order.

5. Pursuant to N.J.S.A. 52:17A-4 and 11, attorneys assigned by the Attorney General shall appear as the Council's representative before the New Jersey Public Employment Relations Commission and any other board, commission, court or agency in matters involving employee relations.

6. Executive Order No. 4 (1970) is rescinded.

7. There is hereby reconstituted the Office of Employee Relations within the Department of Personnel which shall be headed by an Assistant Commissioner for Employee Relations. The Assistant Commissioner for Employee Relations shall be appointed by the Commissioner of Personnel and shall serve at the pleasure of the Commissioner. The Assistant Commissioner for Employee Relations shall oversee the operations of the Office of Employee Relations.

8. The responsibilities of the Office of Employee Relations shall include, but not be limited to:

(a) administration and policy interpretation of labor agreements;

(b) coordinating data collection, information dissemination, reporting, liaison and training activities with other departments;

(c) providing support staff to the Governor's Employee Relations Policy Council; and

(d) offering recommendations to the Governor's Employee Relations Policy Council concerning employee relations and related matters involving State employees, and rendering such reports to the Council as the Council may direct or the Assistant Commissioner for Employee Relations determines.

9. In addition thereto, the Commissioner of Personnel may transfer any and all functions currently performed within the Department of Personnel to the Office of Employee Relations as the Commissioner deems appropriate.

10. (a) All appropriations, personnel, records and property associated with the Office of Employee Relations shall be reallocated within the Department of Personnel in such a manner as the Com-

missioner of Personnel deems appropriate in order to maximize efficiency, service and cost-effectiveness.

(b) The treatment of current personnel in the Office of Employee Relations shall be consistent with the standards set forth in P.L. 1971, c. 375 (C.52:14D-1 et seq.), the "State Agency Transfer Act."

(c) Except as herein otherwise provided and in accordance with Title 11A, Civil Service, of the New Jersey Statutes, allocation of the Office of Employee Relations to the Department of Personnel shall not alter or change the term, tenure of office, rights, obligations, duties or responsibilities otherwise provided for the Office.

11. (a) The Office of Employee Relations is authorized to call upon any department, office, division or agency of the State to supply such statistical data, program reports, and other information or personnel and materials as it deems necessary to discharge its responsibilities under this Order.

(b) Each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Office and to furnish it such information and assistance as it may find necessary in the discharge of its responsibilities under this Order.

12. This Order shall take effect immediately.

Issued July 14, 1994.

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#### EXECUTIVE ORDER NO. 22

WHEREAS, Excessive and unnecessary State mandates force school districts to incur considerable costs which are not necessary to ensure educational opportunity, to safeguard the health and safety of pupils or to guarantee accountability; and

WHEREAS, Overly prescriptive rules and regulations may also inhibit the initiative of teachers and administrators and dilute accountability for local decision making; and

WHEREAS, The State Board of Education has demonstrated its leadership role in this area by initiating a comprehensive

study of unnecessary and overly prescriptive regulations pertaining to education; and

WHEREAS, These efforts of the State Board of Education should be encouraged and facilitated;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 Education (the Department) shall complete a comprehensive and thorough review of all current administrative regulations by December 31, 1995. All regulations which are not necessary or which promote inefficiency or are overly prescriptive shall be identified and referred to the State Board of Education for review, and, if warranted, further action.

2. In order to facilitate the Department's review of its regulatory code, the sunset provisions now in effect in each of the regulations of the Department are hereby extended, respectively, by eighteen (18) months from the date of this Order. During the period of review, all such regulations shall remain in full force and effect and may be modified or repealed at any time by the State Board of Education pursuant to the "Administrative Procedure Act."

3. The Department shall invite the input of the public and shall hold at least two public hearings in order to receive testimony concerning regulations of the Department.

4. This Order shall take effect immediately.

Issued August 25, 1994.

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#### EXECUTIVE ORDER NO. 23

WHEREAS, The State of New Jersey borders many navigable waters of the United States, which contain valuable fisheries, wildlife and other natural resources and provide for the effective movement of commerce into and through the State; and

**WHEREAS, In the past those navigable waters and their valuable natural resources have been damaged by oil spills; and**

**WHEREAS, The federal Oil Pollution Act of 1990 codified at 33 U.S.C.A. 2701 et seq. (Oil Pollution Act) established a means of compensating those parties damaged by oil spills in the navigable waters of the United States by creating a complementary scheme of federal, state and international laws; and**

**WHEREAS, The prompt and effective cleanup of oil spill incidents and the restoration of damaged natural resources is of vital importance and requires close cooperation between the State and other state and federal agencies; and**

**WHEREAS, The Oil Pollution Act specifically requires that the Governor of each State designate a State official who may act on behalf of the public as its trustee for natural resources; and**

**WHEREAS, The Commissioner of the New Jersey Department of Environmental Protection acts in a similar capacity under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and a variety of State laws and is thus the appropriate State official to serve as New Jersey's Natural Resource Trustee under the Oil Pollution Act;**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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:**

**The Commissioner of the New Jersey Department of Environmental Protection is hereby designated ex-officio as the State's Natural Resource Trustee for the purposes outlined in Section 2706 (b)(3) of the Oil Pollution Act.**

**Issued September 15, 1994.**

## EXECUTIVE ORDER NO. 24

**WHEREAS, The Cuban people have demonstrated a longing for freedom and democracy by expressing increasing and visible opposition to the communist regime in Cuba; and**

**WHEREAS, In light of the liberation movements that have resulted in freedom for the people in the former Soviet Union and in Eastern Europe, the Cuban-American community in New Jersey looks forward to the time when similar democratic reform may occur in Cuba; and**

**WHEREAS, The Cuban-American community in New Jersey awaits the day when the Cuban people are liberated from communist dictatorship, and the Cuban people are free to form a government that is democratic, respects human rights and provides due process of law to its citizens; and**

**WHEREAS, A liberated Cuba will enable the Cuban people to engage in economic, social, cultural and educational exchanges with the people of the United States, including the people of New Jersey; and**

**WHEREAS, A free and open exchange of ideas, people and goods will benefit the people of Cuba as well as the people of New Jersey; and**

**WHEREAS, New Jersey contains the second largest population of people of Cuban descent in the United States and should, therefore, study the immigration process and its possible impact on New Jersey and its population and develop appropriate procedures to respond to a potential influx of immigrants; and**

**WHEREAS, Executive Order No. 89 (Florio) directed the Department of Commerce and Economic Development to conduct a study to determine the likely social, economic, and cultural consequences that would result from the liberation of the people of Cuba; and**

**WHEREAS, The liberation of the people of Cuba is becoming increasingly more imminent and Executive Order No. 89**

(Florio) should be reconstituted in recognition of the current situation in Cuba.

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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. 89 (Florio) is hereby superseded by this Order.

2. The New Jersey Department of Commerce and Economic Development shall create a Free Cuba Task Force ("Task Force"), which shall conduct a study to determine the likely economic, social, immigration and cultural consequences that would result from the liberation of the people of Cuba.

3. The Task Force shall prepare a plan to be presented in a report setting forth a strategy that will enable the State of New Jersey and the people of Cuba to participate, for mutual advantage, in the economic, social and cultural opportunities that would result from democratic reform in Cuba. The report shall delineate appropriate steps to be taken with respect to immigration issues which may impact on New Jersey as a result of these developments.

4. The Task Force shall, whenever necessary, coordinate this effort with any and all other State departments having relevant expertise or knowledge of such issues.

5. The Task Force shall consist of fifteen members appointed by the Governor, including the Commissioner of the Department of Commerce and Economic Development who shall serve as an ex officio member and shall chair the Task Force. In the Commissioner's absence, his designee shall serve as chairperson of the Task Force.

6. The Department of Commerce shall report its findings to me no later than six months following the date of this Order and every six months thereafter.

7. This Order shall take effect immediately.

Issued October 11, 1994.

## EXECUTIVE ORDER NO. 25

I, CHRISTINE TODD WHITMAN, 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 25, 1994, the day following Thanksgiving, shall be granted as a day off to employees who work in the Executive Departments of State Government and who are paid from State funds or from federal funds made available to the State, whose functions, in the opinion of their appointing authority, permit such absence.

2. An alternate day shall be granted to the aforementioned category of employees whose functions, in the opinion of their appointing authority, precludes such absence on November 25, 1994.

Issued October 20, 1994.

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EXECUTIVE ORDER NO. 26

WHEREAS, The policies and procedures of the State with regard to the issuance of bonds, notes and other obligations (hereinafter "bonds") and the awarding of underwriting, bond counsel, architectural, engineering and other professional contracts were established by Executive Order No. 79 issued on January 12, 1993 and Executive Order No. 92 issued on May 4, 1993; and

WHEREAS, It was recognized that an analysis of the effect of these policies and procedures should be conducted by the Executive Branch after they had been in place for a number of months and that, in connection with such analysis, it was appropriate to solicit the views of the public and of the affected issuers, service providers and professionals; and

WHEREAS, Executive Order No. 6 issued on January 27, 1994 created an Advisory Panel on Government Contracting Procedures (hereinafter "Advisory Panel") and directed that the Advisory Panel make a comprehensive review of the existing procedures for: the issuance of bonds; the selection



of underwriters in connection with the issuance of bonds; the retention of attorneys or law firms in connection with the issuance of bonds; and the retention of any engineering, architectural or other professional firms; and

WHEREAS, The Advisory Panel was directed to report its findings and detailed recommendations as to whether the existing procedures should remain in place or be altered in order to better accomplish the goals of achieving the best economic results with the highest quality of service and integrity in the award of State contracts at the lowest cost; and

WHEREAS, The Advisory Panel has issued its report, dated July 29, 1994, which sets forth its recommendations with respect to the policies and procedures that were implemented in accordance with Executive Order Nos. 79 and 92; and

WHEREAS, The Advisory Panel has recommended modifications to the present procedures that will ensure that the citizens of the State are informed of specific criteria applied in the selection of the method of bond sale and the selection of professionals; and

WHEREAS, Implementation of the Advisory Panel's recommendations will help to ensure that the methods used by the State, its agencies and authorities for issuing bonds and awarding contracts for professional services will secure public confidence and result in the receipt of the highest quality service at the lowest prices;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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:

#### METHOD OF BOND SALE

1. The policy of the State generally requiring that all bonds of the State and its agencies and authorities (hereinafter "issuers" or "contracting entities") to be sold on a competitive basis is hereby continued. In certain circumstances, however, where it is determined that a negotiated sale would better serve the requirements of a particular financing, negotiated sales may be conducted, if otherwise permitted by law. The circumstances under which a negotiated bond sale shall be permitted shall include the following:

- a. Sale of complex or poor credits;

b. Sale of a complex financing structure, including those transactions that involve the simultaneous sale of more than one series with each series structured differently;

c. Volatile market conditions;

d. Large issue size;

e. Programs or financial techniques that are new to investors; and

f. Variable rate transactions.

2. Where issuers engage in similar types of transactions on a somewhat regular basis, such issuers may make determinations with respect to the method of sale, consistent with section 1 of this Order, which will be utilized for two or more transactions, provided that the transactions are part of a larger bonding program of similarly secured financings. In this instance, issuers shall render public determinations with respect to these financing programs at least annually.

3. Any decision of an issuer regarding the method of sale for a bond issue shall be made by resolution which shall be available to the public. If the issuer is the Treasurer of New Jersey (the "Treasurer"), the Treasurer shall render a written determination which shall be available to the public. When an issuer determines that the sale of bonds should be negotiated with an underwriter based on the standards enumerated in section 1 of this Order, justification in support of such a decision should not be stated in general terms, but should be specific to the particular bond sale. Such findings shall be filed with the Treasurer within five (5) days of the decision.

#### SELECTION OF FINANCIAL ADVISORS, SENIOR MANAGERS AND CO-MANAGERS

4. Issuers whose bonds are secured by appropriations from the State's General Fund, the full faith and credit of the State or otherwise in whole or in part by State revenues, shall adhere to the following procedures and criteria in connection with the selection of financial advisors, senior managers and co-managers:

a. A request for proposal and criteria for selection shall be developed by the issuer and the Treasurer for each financing. Criteria for such selection shall include, but not be limited to, the following:

1) Quality of response regarding the proposed bond structure, credit, and/or marketing strategy;

2) Sophisticated cash flow capabilities as required by a particular financing;

3) Development of a new idea;

- 4) Demonstrated ability to distribute New Jersey securities;
  - 5) Quality of relevant service to the State in previous transactions;
  - 6) Experience with similar financings in which the firm and its proposed financing team participated;
  - 7) Proposed fees for the particular bond sale; and
  - 8) Sufficient capital to participate in underwriting the issue.
- b. The issuer shall provide particular consideration for firms with a presence in New Jersey and for minority-owned and women-owned firms.
- c. The issuer and the Treasurer shall select the financial advisor, senior manager and/or co-manager for the financing.
- d. The firm(s) solicited, the firm(s) selected and criteria applied in connection therewith shall be made available to the public.
- e. Such procedures may include a process whereby a group, or "pool," of financial advisors, senior managers and/or co-managers may be utilized for two or more transactions, provided that the transactions are part of a larger bonding program of similarly secured financings. Issuers may select from such pools without soliciting separate proposals provided the pools are established via procedures and criteria consistent with this Order.

5. Issuers, other than those referred to in section 4 of this Order, shall: (a) formulate procedures consistent with the above criteria for the selection of financial advisors, senior managers and/or co-managers; (b) select such financial advisors, senior managers and/or co-managers based on said procedures and criteria; and (c) make the selection, procedures and criteria available to the public. Such procedures shall provide for an open and competitive process. Information regarding the firm(s) solicited, the firm(s) selected and criteria applied shall also be made available to the public by issuers.

6. Issuers shall undertake the selection process outlined in section 4 of this Order except in those rare instances in which each of the following three criteria have been met:

- a. An innovative idea has been brought to the issuer;
- b. A request for proposal cannot be constructed without communicating the new idea; and
- c. The issue would not benefit from a competitive selection process.

#### SELECTION OF BOND COUNSEL

7. Appointments of bond counsel shall generally be made on a competitive basis where price is a factor but not the sole factor.

The Attorney General of New Jersey (the "Attorney General") shall develop guidelines for the solicitation of such counsel. However, where unusual circumstances may require the appointment of bond counsel with a particular expertise, such as unique prior experience with a transaction, direct appointments shall be permitted.

8. When bond counsel appointments are made pursuant to N.J.S.A. 52:17A-13 or where the Attorney General acts as general counsel to an issuer, the Attorney General shall establish procedures for the appointment of bond counsel on a competitive basis and under criteria that place great weight on the bond counsel's qualifications and suitability for a particular transaction as well as the bond counsel's fee proposal.

a. Such criteria shall include, but not be limited to, the following:

1) Experience of the bond counsel and the proposed team with similar transactions;

2) Familiarity with the State laws relevant to the proposed bond issue;

3) Proficiency with securities, tax and other laws relevant to the financing;

4) Quality of proposed legal strategy with respect to specific questions posed in the request for proposal;

5) Quality of past legal services rendered to the State and its authorities; and

6) Fees.

b. Such procedures and criteria may include a process whereby a group, or "pool," of bond counsel firms may be appointed to serve as counsel to frequent bond issuers for a term not to exceed two years. Issuers may select from such pools without soliciting separate proposals for each bond issue, provided the pools are established via procedures and criteria consistent with this Order. This "pool" process shall, where appropriate, involve the establishment of a fee schedule for such transactions at the outset of the term.

c. Such procedures and criteria may include a process whereby bond counsel may be utilized for two or more transactions, provided that the transactions are part of a larger bonding program of similarly secured financings and further provided such procedures and criteria are consistent with this Order.

9. In cases where the Attorney General is not statutorily required to appoint bond counsel or does not serve as general counsel to an issuer, issuers are hereby directed to establish their

own competitive appointment processes based on the criteria enumerated in section 8 of this Order to ensure the selection of the most qualified firms at the lowest possible fees.

10. In establishing policies and procedures for the selection of bond counsel, issuers and the Attorney General shall provide particular consideration for New Jersey law firms and minority-owned and women-owned law firms.

11. The policies and procedures established by issuers with respect to the appointment of bond counsel, as well as procedures established by the Attorney General in accordance with N.J.S.A. 52:17A-13, shall be available to the public.

#### **APPOINTMENT OF ARCHITECTS, ENGINEERS AND ACCOUNTANTS**

12. The State and its contracting entities shall continue to utilize, to the fullest extent practicable, competitive practices for the selection of architects, engineers and accountants. Contracting entities shall establish their own procedures for competitive selection of architects, engineers and accountants. Such practices shall be aimed at the fundamental goals of ensuring that each contracting entity of the State will receive the best services at the lowest costs. Information regarding such procedures shall be made available to the public.

13. Any selection of architects, engineers and accountants shall include particular consideration for minority-owned and women-owned firms.

#### **30-DAY REPORTS**

14. Within 30 days of the closing of a bond issue, the allocation of bonds and fees received by each member of the underwriting syndicate and a breakout of the costs of issuance paid by the issuer shall be reported to the Treasurer and be publicly available.

#### **ANNUAL DEBT MANAGEMENT PLAN**

15. Each issuer shall annually, on or before January 31, render a debt management plan with respect to its bond financing programs to the Treasurer. This plan shall include information on the outstanding debt and debt service costs for the prior and current year and shall also describe the proposed bond issues for the year outlining the size and purpose of each transaction; the expected

sale date of the issue; the security and expected ratings for each transaction; the expected method of sale and the method of selecting financial professionals consistent with the terms of this Order.

#### APPLICATION AND EFFECTIVE DATE

16. This Order shall apply to the State, its agencies and all authorities that are required to submit their minutes, resolutions or actions for gubernatorial approval or veto. Additionally, the State's participation in all other financings shall, to the extent practicable, be conditioned on compliance with the procedures and criteria set forth herein. "State's participation" includes but is not limited to instances in which a financing: 1) is secured directly or indirectly by the moral obligation of the State; or 2) is secured or financed directly or indirectly by State appropriations; or 3) includes as part of an issuer's offering statement State financial information. The determination as to whether it is practicable to apply this Order to such financings shall be made concurrently by the Treasurer and Attorney General.

17. This Order shall take effect on January 1, 1995 (the "effective date") and shall supersede Executive Order No. 79 (Florio) and Executive Order No. 92 (Florio) as of that date; however, any agency and authority required to comply with the terms of this Order may do so prior to the effective date and in lieu of the terms of Executive Order Nos. 79 and 92, provided such agency or authority has adopted the procedures necessary to comply with all aspects of this Order.

#### SUBSEQUENT REVIEW

18. The Advisory Panel is hereby directed to reconvene and hold at least one public hearing on or about one year from this Order's effective date for the purpose of obtaining public testimony regarding the implementation of this Order. Thereafter, the Advisory Panel shall recommend modifications, if any, necessary to better achieve the objectives of this Order as expressed above.

Issued October 25, 1994.

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#### EXECUTIVE ORDER NO. 27

WHEREAS, The federal government frequently regulates areas that are also subject to State regulation; and

**WHEREAS, Differing State and federal policy goals and unique State prerogatives frequently result in different levels of regulation, different standards and different requirements being imposed by federal and State programs covering the same subject matter; and**

**WHEREAS, New Jersey must simultaneously move toward reducing redundant and unnecessary regulation that dulls the State's competitive advantage while being ever vigilant in the protection of the public's health, safety and welfare; and**

**WHEREAS, New Jersey's administrative agencies should consider applicable federal standards when adopting, readopting or amending regulations with analogous federal counterparts; and**

**WHEREAS, New Jersey's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety and welfare of New Jersey citizens; and**

**WHEREAS, As part of the formal rule-making process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety and welfare of New Jersey citizens.**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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. On or after the effective date of this Order, each administrative agency that adopts, readopts or amends any rule or regulation described in section 2 of this Order shall, in addition to all requirements imposed by existing law and regulation, include as part of the initial publication and all subsequent publications of such rule or regulation, a statement as to whether the rule or regulation in question contains any standards or requirements which exceed the standards or requirements imposed by federal law. Such statement shall include a discussion of the policy reasons and a cost-benefit analysis that supports the agency's decision to impose the standards or requirements and also supports the fact that the State standard or requirement to be imposed is achievable under current technology, notwithstanding the federal government's determination that lesser standards or requirements are appropriate.

2. This Order shall apply to any rule or regulation that is adopted, readopted or amended under the authority of or in order to implement, comply with or participate in any program established under federal law or under a State statute that incorporates or refers to federal law, federal standards or federal requirements.

3. The head of a State agency, upon submission by the agency of the required explanation or analysis of the rule or regulation subject to the provisions of this Order, shall certify in writing that the submission of the State agency permits the public to understand accurately and plainly the purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

4. This Order shall take effect sixty (60) days from the date hereof.

Issued November 2, 1994.

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#### EXECUTIVE ORDER NO. 28

WHEREAS, The President of the United States has authorized the peaceful deployment of United States military forces to Haiti as part of a multinational force, authorized by United Nations Security Council Resolution 940; and

WHEREAS, The President has authorized the deployment of United States military forces to the Middle East in an effort to prevent Iraq from invading Kuwait; and

WHEREAS, The President has authorized the Secretary of Defense to call up select members of the Reserve and National Guard to active duty, and has authorized the Secretary of Transportation to call up members of the Coast Guard Reserve, during the Haiti crisis and the Middle East crisis; and

WHEREAS, Reserve and National Guard members who are activated during these crises serve a vital national interest for which they deserve the full support of the citizens of this State; and



**WHEREAS, The State of New Jersey recognizes that a strong, ready Reserve and National Guard are essential to the defense of this country and vital to this State in times of emergency; and**

**WHEREAS, The State of New Jersey recognizes the personal and economic sacrifices of its employees serving in the Reserve and the National Guard who are called to active duty during the Haiti crisis and Middle East crisis.**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby Order and Direct:**

**1. New Jersey State employees who are called to active duty during the Haiti crisis or the Middle East crisis shall be entitled upon termination of active duty to return to State employment with full seniority and benefits consistent with State and federal military reemployment and seniority rights.**

**2. During active duty for the duration of their activation in these crises, these State employees shall be entitled to receive a salary equal to the differential between the employee's State salary and the employee's military pay.**

**3. These State employees shall be entitled to State employee health benefits, life insurance and pension coverage during active duty service for which they receive differential salary as prescribed in this Order as if they were on paid leave of absence.**

**4. The Commissioner of Personnel shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of Personnel and to make available to the Commissioner such information, personnel and assistance as necessary to accomplish the purposes of this Order.**

**This Order shall take effect immediately.**

**Issued November 16, 1994.**

## EXECUTIVE ORDER NO. 29

**WHEREAS, Executive Order No. 45 of Governor Florio creating the Governor's Advisory Council on AIDS ("Advisory Council") expired on June 2, 1994; and**

**WHEREAS, The presence of Acquired Immune Deficiency Syndrome ("AIDS") and Human Immunodeficiency Virus ("HIV") continue to present a serious public health concern for the State of New Jersey; and**

**WHEREAS, New Jersey currently ranks fifth in the nation in the total number of its citizens infected with AIDS, third in the nation in pediatric cases of AIDS and first in the nation in the proportion of women with AIDS; and**

**WHEREAS, The number of AIDS cases in the State as of March 31, 1994 had grown to 20,942 cases, with 482 of those persons affected being children; and**

**WHEREAS, Combating the spread of AIDS and HIV must be considered a public health priority for the State;**

**NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, 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 Advisory Council is hereby continued.**
- 2. The Advisory Council shall consist of the Commissioner of Health, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Human Services, the Commissioner of Community Affairs, the Commissioner of Insurance, the Attorney General and the Secretary of State or their designees; two members of the New Jersey Senate to be appointed by the Senate President, no more than one of whom shall be from the same political party; two members of the New Jersey General Assembly to be appointed by the Speaker of the Assembly, no more than one of whom shall be from the same political party; and no more than twenty-five public members to be appointed by the Governor. The public members shall consist of educators, representatives of the State's business community, labor representatives, health care and**

other service providers, representatives of the insurance industry, community leaders and persons who have tested HIV positive. The public members shall serve at the pleasure of the Governor. All members of the Advisory Council shall serve without compensation.

3. The Governor shall designate a Chairperson and Vice Chairperson from among the public members of the Advisory Council.

4. It shall be the duty of the Advisory Council to:

- a. advise the Governor on policy issues relating to AIDS;
- b. reassess the Department of Health's implementation of its plan to fight AIDS and HIV in the 1990's, and offer recommendations for updating the plan;
- c. recommend relevant legislation to the Governor;
- d. advise the Governor on the actions needed to coordinate State efforts concerning AIDS and HIV research, prevention and treatment;
- e. advise the Executive Branch concerning its relationship with voluntary agencies and private sector entities involved in AIDS and HIV-related activities; and
- f. prepare an annual report for the Governor on or before June 30 of each year summarizing its findings and providing any recommendations it deems appropriate.

5. The Advisory Council shall receive administrative staff support from the Department of Health.

6. This Order shall take effect immediately and shall apply retroactively to June 2, 1994.

Issued December 1, 1994.



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## REORGANIZATION PLANS

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(1463)



**A PLAN FOR THE REORGANIZATION OF  
THE BOARD OF REGULATORY COMMISSIONERS  
WITHIN THE DEPARTMENT OF THE TREASURY,  
THE REDESIGNATION OF THE BOARD OF  
REGULATORY COMMISSIONERS AS THE BOARD  
OF PUBLIC UTILITIES, THE REDESIGNATION  
OF THE DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND ENERGY AS THE  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, AND THE REFORM OF THE  
FUNCTION OF RATE COUNSEL**

PLEASE TAKE NOTICE that on May 5, 1994, Governor Christine Todd Whitman hereby issues this Reorganization Plan, No.001-1994, (the "Plan"), to provide for more effective development and implementation of the State's utility, environmental and energy policies. The Plan accomplishes these objectives by: (1) redesignating the New Jersey Board of Regulatory Commissioners (the "BRC") as the Board of Public Utilities (the "BPU") and reconstituting the BPU in, but not of, the Department of the Treasury; (2) transferring certain personnel and functions of the BRC and the Department of Environmental Protection and Energy (the "DEPE"), to be hereafter known as the Department of Environmental Protection (the "DEP"), to the BPU; and (3) creating a Division of the Ratepayer Advocate within the BPU and providing for the transfer of certain personnel of the Division of Rate Counsel in the Department of the Public Advocate to a newly created Division of the Ratepayer Advocate within the BPU.

**GENERAL STATEMENT OF PURPOSE**

The safe, efficient, and economical provision of utility services to the citizens of New Jersey has long been of paramount concern. To promote the coherent development of utility policy, then-Governor Woodrow Wilson established the Board of Public Utility Commissioners in 1911. Over the years, the Board has regulated

such essential services as the provision of electricity, natural gas, telephone, water, sewerage, and most recently, cable television.

Perhaps because the function it serves is sensitive to evolving technologies and the social concerns they raise, the Board has undergone numerous reorganizations. In 1977, reflecting public concerns over energy issues, the Board of Public Utility Commissioners was subsumed in, but not of, the newly formed Department of Energy. In 1987, the Department of Energy was abolished, and the Board was transferred to the Department of the Treasury. Finally, in 1991, reflecting public concern over environmental issues, the Board was subsumed within the Department of Environmental Protection and Energy.

The proper mandate of the Board of Regulatory Commissioners, however, is far broader than its inclusion within the Department of Environmental Protection and Energy suggests. Pursuant to its statutory authority, it is the duty of the BRC to regulate the public utilities of the State for the provision of safe, adequate and proper service, including electric, gas, water and sewer, and telecommunications. In addition, the BRC has regulatory oversight of the cable television industry. Thus, the Board is charged with regulating in many contexts, not merely within the context of environmental protection. It is time that the historic and prospective importance of the regulation of the energy and other utilities be reflected within the structure of the agency.

The purpose of this Plan is to create a governmental structure that will promote the statutory aims of the BRC. Pursuant to its mandate, the BRC regularly considers matters regarding economic regulation and interacts with the Division of Rate Counsel, which has been within the Department of the Public Advocate. Beyond economic considerations, the BRC is also responsible for seeing that the energy needs of New Jersey's citizens and industry are met. Accordingly, the BRC is inextricably involved with the planning and implementation of the present and future energy policies of the State.

The Plan puts into place a structure that will coordinate energy planning and promote the efficient regulation of energy costs, thus enhancing the State's economic growth and prosperity. The Plan restores the BRC to its former status in, but not of, the Department of the Treasury and renames the BRC the New Jersey Board of Public Utilities. It proposes the reinstatement of the President of the BPU to cabinet-level status, establishes within the BPU a Division of the Ratepayer Advocate, and realigns the



BPU to better address the dynamic challenges facing the regulated community while remaining sensitive to the need to reduce the cost and size of government. In transferring certain functions of the DEPE to the BPU and relocating the BPU in, but not of, the Department of the Treasury, this Plan recognizes the interdependent relationship between energy management planning and the provision of safe, adequate, and proper service by the State's public utilities and cable television operators. At the same time, those aspects of the Board's function most closely related to environmental concerns -- the Board's regulation of solid waste -- are vested in a redennominated Department of Environmental Protection.

This Plan speaks ultimately to a matter of vital concern; the Board's public interest in ensuring safe, adequate and proper service to all ratepayers, which includes cost-effective ratemaking and long-term energy policymaking. We recognize that the assurance of a consumer voice in the ratemaking process is essential to maintaining public trust. For too long, however, State government has been structured on the assumption that an advocate must be limited to an adversarial role. By formally reposing this essential consumer voice in a separately constituted Department of the Public Advocate, staffed with litigators who billed these adversaries by the hour and expressed the consumer voice in adversary proceedings, we have fostered litigation as a policymaking tool at the expense of reasoned consensus. Although the statutory charge of the Public Advocate has been the protection of the public interest, in recent years Rate Counsel has assumed a reflexively adversarial role in rate proceedings, while utilities have been encouraged to inflate their rate increase requests in anticipation of certain opposition and litigation expenses. To more effectively protect the consumer, this counterproductive cycle must be broken. There is no more wasteful institution than bureaucracy, and no more wasteful process than litigation. We have married the two, we have bureaucratized litigation, and we are all the poorer.

Recognizing that there are cases in which litigation may be necessary in order to protect the interest of the ratepayers, the Plan transfers certain personnel from the Office of the Rate Counsel to a newly constituted Division of Ratepayer Advocate within the BPU. However, the Plan recognizes that litigation must be the last resort where accommodation has failed.

Accordingly, the Plan authorizes the Director of the Division of the Ratepayer Advocate to negotiate with the utilities in advance of the filing of rate case proposals in order to seek an accommo-

dation of views on rate issues so that the consumer's voice is accounted for prior to rate case filings. Further, the Plan envisions that the Director of the Division of the Ratepayer Advocate will participate after the rate proposal is filed in a pretransmittal conference to seek a further accommodation of views. The current system of funding, which provides every incentive to litigate and no motive to accommodate, shall be reformed. No longer will advocates on behalf of the consumer bill by the hour, and no longer will there be an incentive for rate proposals to be subject to protracted litigation. Only after negotiation has failed will litigation be considered.

The Division of the Ratepayer Advocate's role will not be limited to individual ratemaking cases; rather, the Director will play an active role in policymaking, sitting on the Advisory Council of Energy Planning and Conservation and on the Energy Master Plan Committee within the BPU. Additionally, the Director of the Division of the Ratepayer Advocate will assist, advise and cooperate with the BPU Commissioners in the exchange of information and ideas in the formulation of long-term energy policy and goals which impact all New Jersey ratepayers. This will afford the consumer a previously unheard voice in the long-range energy planning for this State. By assuring that the consumer's voice is heard at the outset of the ratemaking and policymaking processes, the Plan promotes the development of consensus and spares the State and its citizens the expense and inefficiency of a process that is reflexively adversarial rather than administratively inclusive. Moreover, although the Division of Rate Counsel was created to represent and protect the public interest in rate case proceedings, in practice Rate Counsel has, in the past, limited its representation to the interests of residential ratepayers. Under this Plan, the Division of the Ratepayer Advocate will be empowered to represent, protect, and advance the interests of all consumers of utility services, including residential, small business, commercial, and industrial ratepayers, in an effort to protect and promote the economic interests of all New Jersey ratepayers.

NOW, THEREFORE, pursuant to the "Executive Reorganization Act of 1969," L.1969, c.203 (C.52:14C-1 et seq.), I find, with respect to each aspect of the reorganization included in this Plan, that each aspect is necessary to accomplish the purpose set forth in section 2 of the Act and that each aspect will:

1. Promote more effective management of the Executive Branch or its departments because it will group similar regulatory functions within agencies specifically focused on industries with similar regulatory concerns;
2. Promote the better and more efficient execution of the law by functionally regulating the State's utility, environmental and energy industries according to major purposes;
3. Group, coordinate, and streamline regulatory functions in a more consistent and practical way;
4. Reduce expenditures; and
5. Eliminate duplication and overlapping of effort that has resulted from the transfer of the BRC to the DEPE by consolidating certain functions which will result in a savings of State funds.

#### **PROVISIONS OF THE REORGANIZATION PLAN**

1.a. The Board of Regulatory Commissioners, including the functions, powers, and duties assigned to it pursuant to L.1911, c.195, as amended (C.48:2-1 et seq), and L.1987, c.365, s.9 (C.52:18A-2.1), and allocated in, but not of, the Department of Environmental Protection and Energy pursuant to Reorganization Plan No.002-1991 together with all of its functions, powers, and duties, is continued and is transferred to and constituted as the New Jersey Board of Public Utilities in, but not of, the Department of the Treasury, except as hereinafter provided. The President of the BRC shall be the President of the BPU.

b. The BPU shall remain constituted as a three-member Board as now provided by law (C.48:2-1). The BPU's final agency decisions, consistent with applicable law, shall be appealable to the Appellate Division of the Superior Court. Further, the BPU shall exercise its substantive authority and powers independent of the supervision of any other department or agency.

c. Pursuant to the authority conferred by N.J.S.A.52:14C-5, vacancies on the BPU shall be filed by the Governor on an ad interim basis by the filing of a letter evidencing the appointment with the Secretary of State, which appointment shall be effective for no more than 90 days and which shall then expire and may not

be repeated, or until such time as a member is nominated, confirmed, appointed and qualified to serve, whichever is sooner.

d. Whenever any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise refers to the Board of Regulatory Commissioners and the chairperson thereof, the same shall mean and refer to the New Jersey Board of Public Utilities and the President thereof.

I find this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this reorganization will help to ensure that the State's public utility policy and energy policies, including energy conservation goals, are effectively developed and carried out. Further, continuing the Governor's limited authority to name an acting member to the BPU will ensure the BPU's ability to carry out its important regulatory functions without delay in the event of a vacancy on the board.

2.a. The Division of Energy Planning and Conservation established in the Board of Public Utilities, pursuant to Reorganization Plan No. 002-1989, paragraph I(1)(a), and created pursuant to L.1977, c.146, as amended (C.52:27F-7), repealed by L.1987, c.365, s.17, and the functions, powers and duties of which were transferred to, and vested in, the Department of Environmental Protection and Energy and the Commissioner thereof pursuant to Reorganization Plan No.002-1991, are hereby reinstituted and all of its functions, powers and duties are hereby transferred to, and vested in, the BPU and the President thereof.

b. The Office of Energy Planning established by Reorganization Plan No.002-1991 and all of its functions, powers, and duties are hereby transferred to, and vested in, the Division of Energy Planning and Conservation in the BPU. All powers of implementation and enforcement relating to the Clean Air Act Amendments and the Safe Drinking Water Act, as currently being implemented and enforced by the DEPE, shall remain vested in the Department of Environmental Protection.

c. Whenever any law, rule, regulation, order, contract, document, judicial, or administrative proceeding or otherwise refers to the Office of Energy Planning, the same shall mean and refer to the Division of Energy Planning and Conservation in the BPU.

d. The responsibility and authority now vested in the Commissioner of the DEPE for the assessment of need and the issuance of a certificate of need for an electric facility under L.1983, c.115,

s.1 (C.48:7-16 et seq.) and Reorganization Plan No.002-1991 are hereby transferred to the BPU.

I find this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this reorganization will confer on the BPU the necessary authority to implement the important goals of coordinating and integrating the State's utility and energy policies. The reorganization also will promote the development and utilization of dynamic new energy conservation programs for residential, commercial, and industrial utility customers and will further provide a structure for promoting the economic interests of the State.

3.a. The Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation, which was transferred to the Department of Environmental Protection and Energy pursuant to Reorganization Plan No.002-1991, paragraph 3a, and which was created by L.1977, c.146, s.10 (C.52:27F-12), together with all its functions, powers and duties as set forth in L.1977, c.146, s.11 (C.52:27F-13), is continued and transferred to, and constituted as, the Advisory Council on Energy Planning and Conservation in the Board of Public Utilities. The President of the BPU shall serve as Chairman of the Advisory Council and the Director of the Division of Ratepayer Advocate shall serve as a member thereof.

b. Whenever any law, rule, regulation, order, contract, document, judicial, or administrative proceeding or otherwise refers to the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Department of Environmental Protection and Energy, the same shall mean and refer to the Advisory Council on Energy Planning and Conservation in the Board of Public Utilities.

I find this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this reorganization will provide the President and the Commissioners of the BPU with the necessary facilities to enable them to research, study, and implement the State's utility and energy policies.

4. The responsibility and authority vested in the Commissioner of the Department of Environmental Protection and Energy to act as Chairperson of the Energy Master Plan Committee, established by L.1987, c.365, s.14 (C.52:27F-14), pursuant to

Reorganization Plan No. 002-1991, paragraph 4, is hereby vested in the President of the BPU; the responsibility and authority of the Commissioner of the Department of Environmental Protection and Energy to serve as a member of the Energy Master Plan Committee is continued.

I find this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this reorganization will help to ensure close coordination and integration of the State's energy and environmental policies with the proper emphasis on energy and the environment.

5. The responsibility and authority for requiring the periodic reporting by energy industries of energy information, and the analysis and reporting of same, set forth in L.1977, c.146, s.16 (C.52:27F-18), which was transferred to the Department of Environmental Protection and Energy and the Commissioner thereof, pursuant to Reorganization Plan No. 002-1991, is transferred to the President of the BPU.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this transfer is consistent with the centralization of energy policy decisions within the BPU.

6. All responsibility and authority now vested in the Commissioner of the Department of Environmental Protection and Energy for the regulation of solid waste under L.1985, c.38, as amended (C.13:1E-136 et seq.), and Reorganization Plan No. 002-1991, or under any other law or regulation, including, but not limited to, rate setting, is continued in the Commissioner of the Department of Environmental Protection, as is the responsibility and authority for implementation of the Clean Air Act Amendments and Safe Drinking Water Act.

I find this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this reorganization will help ensure the close coordination and integration of the State's solid waste policies.

7. All responsibility for budget, fiscal, and personnel matters (including adoption of a Code of Ethics as required by the State Conflicts of Interest Law (C.52:13D-23) and acting as appointing authority with all of the rights thereunder) and day-to-day administration, including contracting and rulemaking authority in these areas, and such authority specifically conferred on the BPU by N.J.S.A.48:2-2, -3, and -7 and under Reorganization Plan No.

002-1991, is hereby transferred from the Department of Environmental Protection and Energy and the Commissioner thereof to the BPU and the President thereof.

Specifically, but not by way of limitation:

a. The BPU shall make annual budget recommendations to the Director of the Division of Budget and Accounting and the BPU budget shall be entirely funded by statutorily authorized assessments and, to the greatest extent legally permissible, and consistent with the BPU's historic practice, its budget shall be entirely separate and independent from the State budget process;

b. The BPU shall adopt the current Code of Ethics governing the BRC pursuant to the Conflicts of Interest Law for submission to, and approval by, the Executive Commission on Ethical Standards;

c. The BPU will be responsible for the allocation of its budget and the assignment of BPU personnel;

d. BPU employees for payroll, administrative and other personnel-related practices shall remain and continue to be categorized as BPU employees; and

e. Upon the request of the Commissioner of the Department of Environmental Protection, the BPU, to the extent reasonably feasible, shall make resources available to the DEPE to carry out an orderly transition of functions now provided to the DEPE by personnel transferred to the BPU.

I find this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, consolidation of the BPU's budget and administrative authority in the BPU will provide the required level of autonomy to the BPU in carrying out its mandate.

8. All Class 2 and Class 3 employees who serve the BRC and/or the DEPE shall be employees of the BPU and shall be transferred to the BPU pursuant to the "State Agency Transfer Act," L.1971, c.375 (C.52:14D-1 et seq.). Additionally, all appropriations, other employees, and records transferred pursuant to this Plan shall be transferred to the BPU pursuant to the "State Agency Transfer Act," L.1971, c.375 (C.52:14D-1 et seq.).

I find this reorganization is necessary to accomplish the purposes set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this transfer will enable the BPU to be

autonomous and will allow the BPU to manage more efficiently its affairs and carry out its mandate.

9. There shall be established within the BPU a Division of the Ratepayer Advocate. The Governor shall appoint the Director of the Division of the Ratepayer Advocate, who may not be removed except for good cause. The Director's term shall be two years, with eligibility for reappointment. The Division is authorized and directed to:

- a. assist, advise and cooperate with the BRC Commissioners in the exchange of information and ideas in the formulation of long term energy policy and goals which impact all New Jersey ratepayers;
- b. negotiate with the utilities on behalf of the ratepayers in an effort to reach an accommodation of views with respect to proposed rate increases;
- c. appear before the BPU on behalf of ratepayers to the same extent that Rate Counsel is currently authorized to appear;
- d. sit on the Advisory Council on Energy Planning and Conservation and on the Energy Master Plan Committee; and
- e. appeal any determination, finding, or order of the BPU determined by the Director of the Division to be adverse to the ratepayer interest.

The Division shall be funded on an interim basis pursuant to statutorily authorized assessments currently dedicated to the Division of Rate Counsel in the Department of the Public Advocate, and to the greatest extent legally permissible and consistent with Rate Counsel's historic practice, its budget shall be entirely separate and independent from the State budget process. At the Director's discretion, such personnel of the Division of Rate Counsel as are deemed necessary to fulfill the mandate of the Division of the Ratepayer Advocate are hereby transferred to the Division of the Ratepayer Advocate. The Director, or a member of the Director's staff to be appointed by the Director, shall sit on the Advisory Council on Energy Planning and Conservation and on the Energy Master Plan Committee.

Notwithstanding the transfer of the Division of Rate Counsel staff to the BPU, the BPU's mission shall continue to be both to protect ratepayers on issues of rates and services and to remain concerned with the financial viability of the regulated entities. Accordingly, the Division of the Ratepayer Advocate will be located separately from the BPU staff, and shall be excluded from all BPU staff discussions of pending litigated rate cases. Neither the Director nor the technical or professional staff shall be sub-



ject to the supervision or control of the BPU. The President of the BPU shall exercise no supervisory control over the Division of the Ratepayer Advocate. All litigation and appeals functions shall be exercised independently.

I find this reorganization is necessary to accomplish the purpose set forth in section 2 of L.1969, c.203. In addition to the reasons set forth above, this transfer reduces the incentive for commencing or continuing unnecessary litigation and promotes a better and more efficient execution of the State's utility rate policies. Most importantly, this reorganization provides for a broader and more comprehensive role by the Division of the Ratepayer Advocate in both protecting consumers and shaping future energy policy.

10. The BPU shall organize itself, as nearly as practicable, along the following functional lines: There shall be nine divisions: a Division of Gas, Division of Electric, Division of Telecommunications, Office of Cable Television, Division of Water and Sewer, Division of the Ratepayer Advocate, Division of Audits, Office of the Economist, and Division of Energy Planning and Conservation.

11.a. The name of the Department of Environmental Protection and Energy is hereby changed to the Department of Environmental Protection. I find this name change, authorized by N.J.S.A.52:14C-5, will better reflect the Department's responsibilities and better inform the public of the Department's role under this Plan.

b. Whenever any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise refers to the Department of Environmental Protection and Energy or the Commissioner thereof, the same shall mean and refer to the Department of Environmental Protection or the Commissioner thereof.

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 May 5, 1994 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 July 4, 1994, 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, or at a date later than July 4, 1994, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

PLEASE 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 of "Reorganization Plans."

Filed May 5, 1994.

Effective July 4, 1994.

## A PLAN FOR THE REORGANIZATION OF THE DEPARTMENT OF COMMUNITY AFFAIRS

TAKE NOTICE that on November 21, 1994, Governor Christine Todd Whitman hereby issues the following Reorganization Plan (No. 002-1994) to provide: (1) for the increased efficiency, coordination and functioning of the Department of Community Affairs by reorganizing the Division of the Department of Community Affairs; (2) for the increased efficiency, coordination and integration of the State's programs for elderly persons by the transfer of the functions, powers, and duties of the Office of the Ombudsman for the Institutionalized Elderly and the Office of the Public Guardian for Elderly Adults to the Division on Aging in the Department of Community Affairs and by the reorganization of the Division on Aging; and (3) for the increased efficiency, coordination and integration of the State's program to provide minimum standards for safety orientation and skills training programs for volunteer athletic coaches, managers, and officials by the transfer of the rulemaking authority of the Governor's Council on Physical Fitness and Sports to the Commissioner of the Department of Community Affairs.

### GENERAL STATEMENT OF PURPOSE

Pursuant to the 1972 Reorganization Plan of the Department of Community Affairs, three Assistant Commissioners of Community Affairs were provided to assist the Commissioner. In order to more efficiently manage and administer the Department of Community Affairs, this Plan seeks to provide for a Deputy Commissioner of Community Affairs and two Assistant Commissioners of Community Affairs who will serve at the pleasure of

the Commissioner and perform such duties as may be prescribed by her. Further, the 1972 Reorganization Plan of the Department of Community Affairs established a Program Analysis Office to assist the Commissioner in developing new programs and performing contract reviews of all grants and contracts for services awarded by the Department of Community Affairs. The functional responsibilities of this Office are currently provided by various Divisions in the Department and it is not necessary to continue the formal existence of the Program Analysis Office.

Pursuant to its present statutory authority, it is the duty of the Department of Community Affairs, among other responsibilities, to provide financial and technical assistance to nonprofit and local government agencies in an effort to improve the quality of life for the State's low-income, handicapped, and disadvantaged residents. These responsibilities are currently administered through various programs in the Division of Human Resources and the Division of Housing and Urban Renewal. The Division of Housing and Urban Renewal, in addition to administering these programs, also administers various statutes which enforce health and safety standards in multiple dwellings, rooming and boarding houses, and new construction. The purpose of this Reorganization Plan, in part, is to create a governmental structure that will foster the efficient implementation of a coherent public policy of integrated assistance to the public and local government agencies. The Plan accomplishes this by transferring the various financial assistance programs administered by the Division of Housing and Urban Renewal to the Division of Human Resources. These Divisions are also being renamed to reflect more accurately their functional responsibilities. This Plan will rename the Division of Housing and Urban renewal as the Division of Codes and Standards and rename the Division of Human Resources as the Division of Housing and Community Resources.

Another essential mission of the Department, pursuant to its present statutory authority, is to provide assistance to individuals and organizations concerned with the well-being of aged persons. These responsibilities are currently carried out through the Department's Division on Aging. The Office of the Ombudsman for the Institutionalized Elderly, pursuant to its present statutory authority, is responsible for protecting the health, safety, and welfare of elderly persons who are patients or residents of health care facilities. The Public Guardian for Elderly Adults, pursuant to its present statutory authority, acts as guardian of or conservator for

elderly persons who have been adjudged incompetent by New Jersey courts. The current allocation of responsibilities among these various agencies creates overlapping responsibility and duplication of services. This Plan will foster the efficient implementation of coherent public policy regarding elderly residents of the State by transferring the functions, powers, and duties of the Ombudsman for the Institutionalized Elderly and the Office of the Public Guardian for Elderly Adults to the Division on Aging in the Department of Community Affairs. With the consolidation of the functions, powers, and duties of the Office of the Ombudsman for the Institutionalized Elderly and the Office of the Public Guardian for Elderly Adults into the Division on Aging, the Division has enhanced responsibilities to protect and provide services to the elderly residents of the State.

In view of the importance of the Division on Aging to the public, and in order to ensure the efficient implementation of an integrated public policy for the elderly residents of the State, this Plan provides for three Assistant Directors of the Division on Aging to assist the Director. The persons appointed by the Governor and confirmed by the Senate as the Ombudsman for the Institutionalized Elderly and the Public Guardian for Elderly Adults would be Assistant Directors of the Division on Aging in the unclassified service. A position of Assistant Director of the Division on Aging, in the unclassified service, would be created to assist the Director in the management and administration of the Division.

The Governor's Council on Physical Fitness in the Governor's Office was created by Executive Order No. 19 (1982). Thereafter, Executive Order No. 82 (1984) changed the name of the Council to the Governor's Council on Physical Fitness and Sports. Pursuant to Executive Order No. 134 (1986), the Department of Community Affairs was authorized and directed to cooperate with the Council in effecting its purposes. Pursuant to P.L.1988, c.87, the Governor's Council on Physical Fitness and Sports was authorized, in consultation with the Department of Community Affairs, to promulgate minimum standards for safety orientation and skills training programs for volunteer athletic coaches, managers and officials. These standards were adopted as regulations in 1990. The Governor's Council on Physical Fitness and Sports has, due to loss of funding, ceased to exercise its administrative functions. Nevertheless, the regulations adopted by the Council continue to be necessary so that volunteer athletic coaches, managers, and officials, by virtue of having successfully completed an approved program in accordance with the regulations, can have the benefit

of statutory immunity from certain tort liability. Without this immunity, individuals who might otherwise volunteer may decide that it would be imprudent for them to do so. It is therefore necessary that there be a functioning official with authority to readopt these regulations when they expire on January 2, 1995. The official who would most appropriately exercise this authority is the Commissioner of the Department of Community Affairs or her designee.

THEREFORE, in accordance with the provisions of the "Executive Reorganization Act of 1969," 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 purpose set forth in section 2 of that Act and will do the following:

1. It will promote more effective management of the Executive Branch because it will group similar functions within already existing agencies;
2. It will promote better and more efficient execution of the law by integrating similar functions within already existing agencies;
3. It will group, coordinate, and consolidate functions in a more consistent and practical way according to major purposes;
4. It will reduce expenditures by more closely aligning similar functions; and
5. It will eliminate some overlapping and duplication within the Executive Branch and the Department by consolidating and reallocating certain functions and responsibilities and thereby better utilize the resources of the Executive Branch and the Department.

THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

- 1.a. The office of the Commissioner in the Department of Community Affairs shall consist of the Commissioner, a Deputy Commissioner, two Assistant Commissioners, and such other staff members as the Commissioner shall designate. The Deputy Commissioner and the Assistant Commissioners shall serve at the pleasure of the Commissioner and perform such duties as may be prescribed by her.

1.b. The Commissioner of the Department shall have the power, not inconsistent with the provisions of this Reorganization Plan, to organize the work of the Department in such organizational units as she may determine to be necessary for efficient and effective operation.

1.c. The Program Analysis Office established by the 1972 Reorganization Plan of the Department of Community Affairs is abolished.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically, this reorganization will promote the more effective management of the Department and the expeditious administration of the public business.

2.a. The Division of Housing and Urban Renewal is renamed the Division of Codes and Standards.

2.b. The Division of Codes and Standards shall be responsible for the administration and enforcement of the Hotel and Multiple Dwelling Law, P.L.1967, c.76; the State Uniform Construction Code Act, P.L.1975, c.217; the Planned Real Estate Development Full Disclosure Act, P.L.1977, c.419; the New Home Warranty and Builders' Registration Act, P.L.1977, c.467; the Rooming and Boarding House Act of 1979, P.L.1979, c.496; the Limited Dividend Nonprofit Housing Corporations or Associations Law, P.L.1949, c.184; the Long-Term Tax Exemption Law, P.L.1991, c.431 (exclusive of the functions assigned by statute to the Division of Local Government Services); the Emergency Shelters for the Homeless Law, P.L.1985, c.48; the Continuing Care Retirement Community Regulation and Financial Disclosure Act, P.L.1986, c.103; the Site Improvement Standards Act, P.L.1993, c.32 (exclusive of the functions assigned by statute to the Site Improvement Advisory Board); and all acts amending or supplementing any of these acts. This Division shall exercise all functions assigned to the Department, either now or in the future, concerning building codes, housing codes, landlord-tenant information or the rights of purchasers of new homes or of units or interests in planned real estate developments.

2.c. The Director of the Division of Codes and Standards shall be a voting member of the Site Improvement Advisory Board established pursuant to P.L.1993, c.32. The designation of the Director of the Division of Housing in the Department of Community Affairs as a voting member of the Site Improvement Advisory Board, pursuant to P.L.1993, c.32, is eliminated.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically,

this reorganization will promote the more effective management of the department and the expeditious administration of the public business, and will increase the efficiency of the operations of the Department.

3.a. The Division of Human Resources is renamed the Division of Housing and Community Resources.

3.b. The Division of Housing and Community Resources shall exercise all of the powers and functions of the Division of Human Resources pursuant to the 1972 Reorganization Plan of the Department of Community Affairs, exclusive of the powers and functions exercised by the Division on Aging and the Division on Women. In addition, this Division shall be responsible for the administration of the functions assigned to the Department under the Department of Community Affairs Demonstration Grant Law of 1967, P.L.1967, c.82; the Maintenance of Viable Neighborhoods Act, P.L.1975, c.248; the Neighborhood Preservation Housing Rehabilitation Loan and Grant Act of 1975, P.L.1975, c.249; the Prevention of Homelessness Act (1984), P.L.1984, c.180; the Relocation Assistance Law of 1967, P.L.1967, c.79; the Relocation Assistance Act, P.L.1971, c.362; the Fair Housing Act, P.L.1985, c.222; the Local Redevelopment and Housing Law, P.L.1992, c.79; any acts amending or supplementing any of these acts; and any and all State and federally funded programs, existing either now or in the future, other than those within the jurisdiction of the Division on Aging, the Division on Women or the Division of Fire Safety, providing financial or technical assistance to individuals, housing sponsors or community organizations.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically, this reorganization will promote the more effective management of the Department and the more expeditious administration of the public business, will increase the efficiency of the operations of the Department, and will group, coordinate and consolidate the functions of the Department according to major purposes.

4.a. The Office of Ombudsman for the Institutionalized Elderly, created pursuant to P.L.1977, c.239, and allocated in but not of the Department of Community Affairs, and all of its functions, powers, and duties are continued and transferred to the Division on Aging in the Department of Community Affairs. These functions, powers, and duties shall be organized and implemented within the Division on Aging as determined by the Commissioner of the Department of Community Affairs.

4.b. The position of Ombudsman for the Institutionalized Elderly created pursuant to P.L.1977, c.239, section 4, is continued and transferred to the Division on Aging in the Department of Community Affairs. The Ombudsman will be appointed as provided in P.L.1977, c.239, section 4.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically this reorganization will promote the more effective management of the Executive Branch and its agencies, it will reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive, it will increase the efficiency of the operations of the Executive to the fullest extent practicable, it will group, coordinate and consolidate agencies and functions of the Executive according to major purposes, it will reduce the number of agencies by consolidating those having a similar function under a single head, and it will eliminate overlapping and duplication of effort.

5.a. The Office of Public Guardian for Elderly Adults, created pursuant to P.L.1985, c.298, and allocated in but not of the Department of Community Affairs, all of its functions, powers, and duties, are continued and transferred to the Division on Aging in the Department of Community Affairs. These functions, powers, and duties shall be organized and implemented within the Division on Aging as determined by the Commissioner of the Department of Community Affairs.

5.b. The position of Public Guardian for Elderly Adults, created pursuant to P.L.1985, c.298, section 5, is continued and transferred to the Division on Aging in the Department of Community Affairs. The Public Guardian will be appointed as provided in P.L.1985, c.298, section 5.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically, this reorganization will promote the more effective management of the Executive Branch and its agencies, it will reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive, it will increase the efficiency of the operations of the Executive to the fullest extent practicable, it will group, coordinate, and consolidate agencies and functions of the Executive according to major purposes, it will reduce the number of agencies by consolidating those having a similar function under a single head, and it will eliminate overlapping and duplication of effort.



6.a. The Director of the Division on Aging shall be appointed as provided in P.L.1967, c.42, section 7.

6.b. The Director of the Division on Aging shall be assisted by three Assistant Directors.

6.c. The person appointed as Ombudsman for the Institutionalized Elderly shall be an Assistant Director of the Division on Aging. This position shall be in the unclassified service.

6.d. The person appointed as the Public Guardian for Elderly Adults shall be an Assistant Director of the Division on Aging. This position shall be in the unclassified service.

6.e. A position of Assistant Director of the Division on Aging is created to assist the Director in the management and administration of the various programs of the Division. This position shall be in the unclassified service.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically, this reorganization will promote the more effective management of the Executive Branch and its agencies, it will reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive, it will increase the efficiency of the operations of the Executive to the fullest extent practicable and it will eliminate overlapping and duplication of effort.

7. The authority conferred upon the Governor's Council on Physical Fitness and Sports, pursuant to P.L.1988, c.87 (C.2A:62A-6), to adopt minimum standards for safety orientation and skills training programs for volunteer athletic coaches, managers and officials, is hereby transferred to the Commissioner of the Department of Community Affairs or her designee.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L.1969, c.203. Specifically, this reorganization will promote the more effective management of the Executive Branch and its agencies, it will reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Executive, it will increase the efficiency of the operations of the Executive to the fullest extent practicable, and it will eliminate overlapping and duplication of effort.

8. All employees of the Office of the Ombudsman for the Institutionalized Elderly and the Office of the Public Guardian for Elderly Adults who are serving in the unclassified service of the State as of the effective date of this Reorganization Plan, other

than those individuals serving in the positions of Ombudsman for the Institutionalized Elderly, Public Guardian for Elderly Adults, Confidential Secretary, Confidential Assistant, and General Counsel, shall, upon the transfer of those offices and the position therein to the Division on Aging, have the titles in which they are serving reallocated to the career service. Such individuals shall be permitted to occupy such position without being subjected to an examination process. All employees whose titles are reallocated to the career service shall, however, be required to satisfactorily complete a working test period before attaining permanent status in such titles within the career service.

9. All transfers directed by this Plan shall be made in accordance with the "State Agency Transfer Act," L.1971, c.375 (C.52:14D-1 et seq.).

10. 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 November 21, 1994 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 January 20, 1995 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, or at a date later than January 20, 1995, should the Governor establish such a later date for the effective date of the plan, or any part thereof, 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 the New Jersey Register under a heading of "Reorganization Plans."

Filed November 21, 1994.

Effective January 20, 1995.

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**HIGHWAYS, ROADS AND BRIDGES**

"Dolores G. Cooper Bridge," designated, J.R.3.

**HOLIDAYS**

"A Day of Prayer in New Jersey"; first Thursday in May, C.36:2-34, Ch.44.

"Senior Citizen's Day"; May 15, C.36:2-33, Ch.41.

**HOSPITALS**

Senator Garrett W. Hagedorn Center for Geriatrics renamed Senator Garrett W. Hagedorn Gero-Psychiatric Hospital, C.30:1-7.2, amends R.S.30:1-7 et al., Ch.24.

**HOUSING**

Low income housing; State requirements, certain, conform to federal, C.40A:20-5.1 et al., amends C.40A:20-3, Ch.87.

Low, moderate income fair share financing, county improvement authorities; authorized, amends C.40:37A-108, Ch.31.

**HUMAN SERVICES**

Medicaid eligibility, transfer of assets, income; limited, amends C.30:4D-3, Ch.65.

**INSURANCE**

Company domicile, transferability; process, C.17:17-20 et al., Ch.189.

Foreign insurers, certain, waiver of experience, certain; permitted, C.17:32-2.1, Ch.156.

Fraternal benefit society, officer, employee, agent, certain; producer licensing exemption, amends C.17:22A-3, Ch.157.

Funeral arrangements, prepaid; existing insurance policy, assignment, permitted, amends C.45:7-82 et al., Ch.163.

"Good Driver Protection Act of 1994," Market Transition Facility debt; funding, C.34:1B-21.1 et al., amends C.17:33B-5 et al., Ch.57.

Health, loss ratio requirements for individual insurance carriers, certain; clarified, amends C.17B:27A-4 et al., Ch.102.

Merit Rating Plan surcharges, collection methods; changed, amends C.17:29A-35 et al., Ch.64.

Mine subsidence insurance issued by New Jersey Insurance Underwriting Association; authorized, amends C.17:37A-1 et al., Ch.143.

"New Jersey Life and Health Insurance Guaranty Association Act"; assessment provision, changed, amends C.17B:32A-8, Ch.180.

New Jersey Small Employer Health Benefits Program Board of Directors; membership increased, amends C.17B:27A-29, Ch.97.

New Jersey Small Employer Health Benefits Program; revised, C.17B:27A-19.1 et al., amends C.17B:27A-17 et al., Ch.11.

Rating, advisory organizations; functions, information to auto insurers, certain, permitted, amends C.17:33B-31 et al., Ch.188.

Surplus lines insurers, certain, qualifications relating to S corporations; changed, amends C.17:22-6.45, Ch.50.

**JOINT RESOLUTIONS**

"Dolores G. Cooper Bridge;" designated, J.R.3.

"Domestic Violence Awareness Month;" designated, J.R.2.

Holocaust instruction law, P.L.1994, c.13; designated the "Matthew Feldman Act," J.R.1.

**LABOR**

Asbestos work, licensing, permits, standards; law revised, C.34:5A-43 et seq., amends C.34:5A-32 et seq., Ch.21.

**LABOR (continued)**

- Minors as volunteers, nonprofit organizations, affordable housing, certain; permitted, conditions, C.34:2-21.17d et seq., amends C.34:2-21.17, Ch.82.
- Youth Transitions to Work Partnership; funding, career pay levels, amends C.34:15D-4 et al., Ch.73.

**MILITARY AND VETERANS**

- New Jersey Distinguished Service Medal, posthumous award; permitted, amends N.J.S.38A:15-2, Ch.36.
- Vietnam Veterans' Memorial Fund; gross income tax refund checkoff, provided, C.54A:9-25.6, Ch.139.

**MOTOR VEHICLES**

- Accident, leaving the scene; penalties, increased, amends R.S.39:4-129 et seq., Ch.183.
- "Consumer Protection Leasing Act," C.56:12-60 et seq., amends R.S.39:10-19 et al., repeals C.56:12-50 et seq., Ch.190.
- Driving while under the influence; probable cause, refusal, penalties, arrest, amends R.S.39:4-50 et al., Ch.184.
- Special license plates, emergency medical technician-ambulance; authorized, C.39:3-27.59 et seq., Ch.29.

**MUNICIPALITIES**

- Council aides, certain; permissible salary, increased, amends C.40:69A-60.5, Ch.116.
- Donations, gifts for open space preservation, parks; solicitation authorized, C.40:12-29, Ch.111.
- Licensing fees, certain, maximum additional assessment imposed; increased; use, amends C.40:52-7 et al., Ch.46.
- "Local Budget Law," "cap" banking, restored, C.40A:4-45.15a and C.40A:4-45.15b, Ch.100.
- Municipal financial officer; examination, appointment to chief; eligibility, persons, certain, Ch.89.
- Sewerage, incinerator authorities; seven member appointment, permitted in first-class cities, amends C.40:14A-4 et al., Ch.85.
- Solid waste, certain, quick removal by property owner, tenant; ordinances, authorized, C.40:48-2.13a, amends C.40:48-2.13 et al., Ch.167.
- Tax collector's office; hours of operation, set by governing body, permitted, amends N.J.S.40A:9-141, Ch.75.
- Utility, sewerage, water rates reduced for senior citizens, permanently disabled; permitted, C.40:14A-8.2 et al., amends C.40:14A-8 et al., Ch.78.

**PENSIONS AND RETIREMENT**

- County, municipal systems, certain, refunding bonds; permitted, amends C.40A:2-51.1 et al., Ch.185.
- County probation officers, certain, pension fund; terminated, transfer to PERS; authorized, C.43:10-59.3 et seq., Ch.23.
- Local government retirees, certain, payment of health benefit premiums; permitted, C.40A:10-23.3, Ch.34.
- Police and Firemen's Retirement System, accidental death benefits; member, volunteer firemen killed in the line of duty, amends C.43:16A-10, Ch.15.
- Police and Firemen's Retirement System, terminally ill member; deeming of retirement before death, C.43:16A-9.4, Ch.104.
- State-administered retirement systems, funding; changed, C.43:4C-1, amends N.J.S.18A:66-18 et al., repeals N.J.S.18A:66-67 et al., Ch.62.
- Townships, certain, liability for health benefits for retirees, certain; established, C.40A:10-23.2, Ch.30.

**PLANNING AND ZONING**

- Municipal planning board, mayor's designee; authorized, amends C.40:55D-23, Ch.158.
- Municipal planning boards, certain; power of board adjustment, permitted, amends C.40:55D-25, Ch.186.
- State, local permits, expiration date, extended, amends C.40:55D-131 et al., Ch.145.

**POLICE**

- State, "DNA Database and Databank Act of 1994," C.53:1-20.17 et seq., Ch.136.

**PROFESSIONS AND OCCUPATIONS**

- Board of Pharmacy, membership; criteria revised, amends R.S.45:14-1 et al., Ch.166.
- "Charitable Registration and Investigation Act"; fund raisers, regulation, C.45:17A-18 et seq., repeals C.45:17A-1 et al., Ch.16.
- Professional engineers, land surveyors; comity provisions, revised, amends C.45:8-35, Ch.171.
- Public accounting, organizational forms for permitted practice; expanded, amends C.45:2B-3 et al., Ch.43.
- Real estate brokers; mobile, manufactured homes, sales, purchases, deals, permitted, C.45:15-17.3 and C.45:15-17.4, amends R.S.39:10-19, Ch.150.

**PUBLIC CONTRACTS**

"County and Municipal Water Supply Act," terms of agreements; 40 years, amends C.40A:11-15, Ch.71.

"No damages for delay" clause, void, unenforceable in construction contracts, C.2A:58B-3, Ch. 80.

Public contracts law, special contractual provisions; extended to historic buildings, certain, amends C.52:32-2.2, Ch.25.

**PUBLIC EMPLOYEES**

Immunity from liability, certain circumstances; extended, notice; required, amends N.J.S.59:3-1 et al., Ch.49.

**PUBLIC RECORDS**

Legal documents; recording, indexing by electronic methods, allowed, C.47:1-11 et al., amends R.S.46:19-1 et al., Ch.140.

**PUBLIC UTILITIES**

"Underground Facility Protection Act," C.48:2-73 et seq., amends C.48:9-33, repeals N.J.S.2C:17-4 and 2C:17-5, Ch.118.

**REORGANIZATION PLANS**

Board of Regulatory Commissioners, redesignated as the Board of Public Utilities; Department of Environmental Protection and Energy, redesignated as Department of Environmental Protection; Division of Ratepayer Advocate, No.001-1994.

Department of Community Affairs, divisions, programs; reorganized, No.002-1994.

**SCHOOLS****Budget:**

Election calendar, adjustments by Commissioner of Education; authorized, Ch.6.

Free balances in public schools; maximum, amends C.18A:7D-27.1, Ch.39.

Free public education; parent or guardian in active military service, residence of child, amends N.J.S.18A:38-1 et al., Ch.169.

Genocide, holocaust education in public schools; required, C.18A:35-27 et seq., Ch.13.

Holocaust instruction law, P.L.1994, c.13; designated the "Matthew Feldman Act," J.R.1.

Limited purpose regional district, withdrawal from, certain; payment of equity interest, provided; bond issuance, permitted, C.18A:13-61.1 and 18A:13-16.2, Ch.96.



**SCHOOLS (continued)**

- School board members, State operated districts, election schedule; changed, Ch.7.
- School buses, transportation, permitted; developmentally disabled, C.18A:39-22.1, Ch.172.
- State Health Benefits Program, substitute teachers, certain, waiving of enrollment; permitted, amends C.52:14-17.31, Ch.40.

**STATE GOVERNMENT**

- Attorneys-General, deputies, assistants; confidential employees, amends C.52:17A-7, Ch.161.
- Fees, various; established, increased, C.30:4D-7f et al., amends N.J.S.14A:15-2 et al., Ch.60.
- "Higher Education Restructuring Act of 1994," C.18A:3B-1 et seq., amends N.J.S.18A:1-1 et al., repeals N.J.S.18A:3-1 et al., Ch.48.
- Permits, State, local, expiration date; extended, amends C.40:55D-131 et al., Ch.145.
- Property, real, surplus, certain, sale; authorized, Chs.17, 83.
- "Public Advocate Restructuring Act of 1994," C.52:27E-50 et al., amends C.2A:158A-3 et al., repeals C.52:27E-1 et al., Ch.58.
- Public funds, certain, investment in entities trading in, with South Africa; permitted, repeals C.52:18A-89.1 et seq., Ch.19.
- Task Force on New Jersey History; established, Ch.146.

**TAXATION**

- Corporation business tax surtax; discontinued, Ch.3.
- Gross income tax:
  - Minimum taxable income; increased, amends N.J.S.54A:2-4 et al., Ch.8.
  - Partnership, reporting requirements; revised, amends N.J.S.54A:8-6, Ch.117.
  - Rates; 5% reduction for 1994 and thereafter, amends N.J.S.54A:2-1, Ch.2.
  - Rates; reduced for 1995 and thereafter, amends N.J.S.54A:2-1, Ch.69.
  - Vietnam Veterans' Memorial Fund; contribute part of refund, C.54A:9-25.6, Ch.139.
- "Local Tax Authorization Act," expiration date; extended, amends C.40:48C-5 et al., Ch.28.
- Municipal property tax liens, collection procedures; law revised, amends R.S.54:4-64 et al., repeals R.S.54:5-78 et al., Ch.32.
- Real property, bills; delivery, payment, revised, C.54:4-66.1 et al., amends R.S.54:4-66 et al., Ch.72.

**TRANSPORTATION**

Rail freight service lines; inventory, passenger service, restoration priority list, required, Ch.179.

**UNEMPLOYMENT COMPENSATION**

Extended benefits; federal standards, C.43:21-24.20, amends C.43:21-24.12, Ch.59.

Fund; State disability benefits fund; contributions, amends R.S.43:21-7 et al., repeals P.L.1994,c.67,s.46, Ch.112.

**UNIFORM COMMERCIAL CODE**

Leases, funds transfers, enacted; bulk transfers, repealed, N.J.S.12A:2A-101 et al., amends N.J.S.12A:1-105 et al., repeals N.J.S.12A:6-101 et al., Ch.114.

**VALIDATING ACTS**

School district bonds, Ch.88.

**WATER SUPPLY**

Dams, reservoir, decommissioning; municipality as interested party; public hearing, required; amends R.S.58:4-5 et al., Ch.84.

**WELFARE**

Social security number, general public assistance benefits recipients; shared with contiguous states, C.44:8-111.1 et seq., Ch.147.

**WORKERS' COMPENSATION**

Exemption, employees, federal coverage, certain, amends R.S.34:15-36, Ch.74.